

GAHC010278652023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/191/2023

NAGESH SARSARIA
S/O- RAJULAL HARIJAN,
R/O- LAKSHMI NAGAR, GANESH PATH, GANESHPARA,
P.O AND P.S- BHARALUMUKH, GUWAHATI, DIST- KAMRUP (M), ASSAM

VERSUS

MAMTA CHAWARIA @ MAMTA BALMIKI
D/O- RAKESH CHAWARIA,
R/O- JORHAT ENGINEERING COLLEGE (JEC) ROAD, GARMUR,
VILL- KALYANPUR, NEAR GARMUR HIGH SCHOOL,
P.O- JEC,
P.S- JORHAT,
DIST- JORHAT, ASSAM,

For the appellant(s) : Mr. M. H. Laskar, Advocate

For the respondent (s) : Mr. S. C. Keyal, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

01.04..2024

This is an application under Article 227 of the Constitution challenging the order dated 07.10.2023 passed in petition No.541/2023 in T.S.(M) No.32/2023 whereby the learned Trial Court vide the impugned

order, directed the petitioner herein who was the opposite party in the said proceedings to pay an amount of Rs.5,500/- per month as maintenance pendete-lite and additionally Rs.500/- as ligation expenses per month to the respondent who was the petitioner in those proceedings.

2. The learned counsel for the petitioner submitted that it is a well settled principle of law as has been held by the Supreme Court in the case of ***Rejnesh vs. Neha & Another***, reported in **(2021) 2 SCC 324** that the Court while adjudicating maintenance proceedings has to obtain affidavit disclosing the assets and liabilities of both the parties before passing an order. The learned counsel for the petitioner further referred to the judgment of the Supreme Court in the case of ***Adity @ Mithi vs. Jitesh Sharma***, reported in **(2023) SCC OnLine SC 1451** wherein the principles as laid down in the case of ***Rajnesh*** (supra) have been followed.

3. This Court upon hearing the learned counsel for the petitioner has put a specific query as to whether the petitioner who admittedly has not submitted the affidavit disclosing assets and liabilities can raise such plea in a proceedings under Article 227 of the Constitution. More so, when the learned Trial Court while passing the impugned order had categorically also observed that none of the parties have furnished their affidavits of assets and liabilities. The learned counsel for the petitioner submitted with candour that the petitioner herein did not submit the affidavit of assets and liabilities.

4. Taking into account the above, this Court without interfering with the order dated 07.10.2023, grants the liberty to the petitioner to file a review application before the Trial Court in the line of the law laid down by the Supreme Court in the case of ***Rajnesh*** (supra) and ***Aditi @ Mithi*** (supra).

5. It is made clear that if such application is filed, such application can only be entertained if the petitioner herein duly submit the affidavit of assets and liabilities. The learned Trial Court, i.e. the Court of the Additional District Judge, Jorhat shall then consider such application if filed within 30 days from today.

6. In view of the above, the instant proceedings stands disposed of.

JUDGE

Comparing Assistant