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2019

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

C.R.R. 56 of 2019

SM

**Smt. Parna Santra & Anr.
Versus
Sri Dipak Kumar Santra**

Mr. Subham Ghosh,
Mr. Deborshi Dhar.
.....for the petitioner.

1. Let affidavit of service filed on behalf of the petitioners be kept with the record.
2. This criminal revisional application has come up before this Court against an order passed by learned Judicial Magistrate, 1st Court, Siliguri wherein the trial Court directed the opposite party/husband to provide interim monthly relief of Rs.3,000/- to the petitioner (wife) and Rs. 2,000/- (son) per month.
3. Learned counsel Mr. Deborshi Dhar, appearing on behalf of the petitioners submits that the opposite party is a salaried employee working as FSO in Adonis Laboratories and earning income of Rs.50,000/- per month.
4. Learned counsel also submits that the opposite party in his objection before the Trial Court did not specifically deny the above fact and did not reveal the salary that he earns. He further submits that since special knowledge of salary of the opposite party is known to the opposite party he was required to prove the exact amount that he was earning as a salaried

employee. He submits that a sum of Rs.5,000/- each to the petitioner and son should have been granted by the Trial Court under the facts and circumstances.

5. None appears on behalf of the opposite party in spite of service on two occasions, and accordingly, I draw an adverse inference against the opposite party.
6. In the impugned order, it is clear that the Trial Judge has come to a finding that the mother and child are somehow managing to survive with the help of relatives and the opposite party being the husband of the petitioner no. 1 cannot continue to neglect the duties which he is expected to perform towards his wife and child. The additional finding of the Trial Court is that the petitioner has failed to show that the monthly income of the opposite party is Rs. 50,000/- per month. The Trial Court has also come to the finding that even though the opposite party has denied the above claim, but he too has failed to reveal his own income. Having come to the above finding, the Trial Judge has fixed a monthly monetary relief aggregating to Rs. 5,000/- for the wife and son.
7. In my view, keeping the economic condition of the petitioners, the above sum is too meager and not in tune with the income of the opposite party. It was the burden of the opposite party to deny specifically the alleged salary, and he could have done so very easily by producing his salary slip and bank statements. However, he failed to do so, and therefore, having not revealed his true income, it is to be presumed that the

allegation of his income being approximately Rs. 50,000/- is true.

8. Having gone through the materials on record, I am of the view as indicated above that the interim monthly maintenance should be higher than the amount fixed by the Trial Court. Accordingly, the interim monthly maintenance to be paid by the opposite party should be fixed at Rs.5,000/- per month to the petitioner no.1 (wife) and Rs.5,000/- to the petitioner no.2.
9. The Trial Court is also directed to expedite the trial.
10. Urgent Photostat certified copy of this order, if applied for, be given to the petitioner upon compliance of requisite formalities.

(Shekhar B. Saraf, J.)

