

24.12.2020

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Sl. 4

C.O. 3635 of 2019

Swapan Kumar Chakraborty
Vs.
Rita Chakraborty

Mr. Debdutta Basu
Ms. Pampa Dey (Dhabal)
..for the husband/petitioner.

Mr. Rahul Karmakar
..for the wife/opposite party.

The husband has filed the instant application under Article 227 of the Constitution of India challenging the order dated September 2, 2019 passed by the Additional District Judge, Alipore in Matrimonial Suit No. 31 of 2005.

The husband filed an application under Section 9 of the Hindu Marriage Act praying for restitution of conjugal rights. Alternatively a decree for divorce dissolving the marriage between the parties was also prayed for. The said application was registered as Matrimonial Suit No. 31 of 2005.

The wife took out an application under Section 24 of the Hindu Marriage Act in connection with the said suit.

The said application was initially disposed of by

the learned Trial Judge by an order dated August 29, 2017 thereby directing the husband to pay maintenance amount at the rate of Rs. 4,000/- to the wife.

Challenging the aforesaid order dated August 29, 2017 the wife filed a civil order being C.O. 768 of 2018 which was disposed of by a coordinate bench of this court by an order dated February 18, 2019. The operative part of the said order runs thus :-

“The court below shall decide the matter afresh on the basis of the settled principles of grant of maintenance which is roughly one-third of the salary amount.

The court will take into consideration for the purpose of calculations of arrears of maintenance payable to the wife on and from year 2010 along with all revisions until 31.01.2016, till such time the husband superannuated from service.

The court below shall recalculate the maintenance amount both in arrears as directed herein above as well as the current enhanceable maintenance amount payable on the basis of the pension and retirement benefits received including gratuity and leave encashment payable and other benefits to the husband.

The court below shall dispose of the application

after calling for relevant records and after oral examination of the husband as well as the wife. Such exercise shall be completed by the court below within a period of three weeks from the date of communication of a copy of this order.

The arrears as may be decided by the court shall be paid by the opposite party/husband in three equal monthly instalments and current maintenance amount shall be paid month to month, concurrently, or as may be decided by the court below indicated herein above.”

The wife preferred a review application being RVW No. 77 of 2019. The said review application was, however, dismissed by an order dated August 5, 2019 with costs assessed at Rs. 11,000/- upon holding that the review application is a product of gross abuse of process of law. A copy of the order passed in the review application filed by Mr. Rahul Karmakar, learned advocate appearing on behalf of the wife, in court today, is kept with the record.

After remand, the learned Trial Judge by the order impugned disposed of the application under Section 24 of the said Act upon holding that the husband has to pay alimony pendente lite @ Rs. 11,000/- per month till the disposal of the suit. The learned Trial Judge further directed the husband to pay the entire arrears in three equal monthly instalments.

Being dissatisfied with the said order, the husband filed the instant civil order.

Mr. Debdutta Basu, learned advocate appearing on behalf of the husband/petitioner herein contends that the learned Trial Judge directed the husband to pay alimony pendente lite @ Rs. 11,000/- per month by taking into consideration one-third of the gross salary of the husband. He submits that the gross salary less statutory deductions has to be taken into consideration for the purpose of fixing the amount of alimony pendente lite. He further submits that the amount of Rs. 11,000/- fixed by the learned court below as alimony pendente lite is also in excess of one-third amount of the pension which the husband is getting at the present. According to him, the learned Trial Judge did not fix the amount of alimony pendente lite according to the directions contained in the order of remand.

The husband has filed a supplementary affidavit annexing the documents which the learned advocate of the husband and the wife received in reply to a query made under the Right to Information Act. Mr. Basu by placing reliance on the said documents submitted that the learned Trial Judge fixed an amount in excess of one-third of the net salary and the pension.

Mr. Rahul Karmakar, learned advocate appearing

on behalf of the wife/opposite party seriously disputes the submissions of Mr. Basu.

Mr. Karmakar contends that the learned Trial Judge while fixing the alimony pendente lite has taken into consideration the gross salary of the husband less the statutory deductions. He further submits that the learned Trial Judge did not take into consideration the directions contained in the order passed by His Lordship the Hon'ble Justice Rajasekhar Mantha in C.O. 768 of 2018 inasmuch as the learned court below while recalculating the maintenance amount did not take into consideration the retiral benefits received by the husband including the gratuity and leave encashment payable and other benefits of the husband. Mr. Karmakar further submits that the husband has also defaulted in paying alimony in respect of the month of June, 2020. Such submission is disputed by Mr. Basu, learned advocate appearing on behalf of the husband.

I have heard the learned advocates of the respective parties and have considered the materials on record.

A coordinate Bench of this Court by an order dated February 18, 2018 passed in C.O. 768 of 2018 remanded the matter to the learned Trial Judge directing him to recalculate the maintenance amount

on the basis of the pension and the retiral benefits including gratuity and leave encashment payable and other benefits to the husband.

After going through the impugned order it appears that the learned Trial Judge was of the opinion that the claim of the wife as one-third of the retiral benefit of Rs. 18,89,183/- (rupees eighteen lakh eighty nine thousand one hundred eighty three) cannot be entertained. The learned Trial Judge while recalculating the maintenance amount did not take into consideration the retirement benefits received including gratuity and leave encashment and other benefits. The learned Trial Judge while recalculating the maintenance amount acted contrary to the directions passed by this Court in C.O. 768 of 2018.

It is well settled that the learned Trial Judge while deciding the application under Section 24 of the Hindu Marriage Act after remand could not have travelled beyond the directions contained in the order of remand.

In my view, the learned Trial Judge decided the application de hors the direction contained in the order of remand.

For the reasons as aforesaid, the impugned order suffers from infirmity.

On a query from this Court the husband has

volunteered to pay a sum of Rs. 2,00,000/- to the wife within a week from date. Accordingly, the husband is directed to pay the aforesaid sum of Rs. 2,00,000/- to the wife within a week from date.

C.O. 3635 of 2019 is allowed by setting aside the impugned order and remanding the matter to the learned Additional District Judge, 4th Court at Alipore with a direction to decide the application afresh in the light of the directions contained in the order dated August 29, 2017 passed in C.O. 768 of 2018 and the same is to be disposed of as expeditiously as possible and preferably by the end of February, 2021 after giving an opportunity of hearing to the parties and without granting unnecessary adjournments to either of the parties.

Till the application is decided by the learned court below, the husband shall go on paying a sum of Rs. 10,000/- per month as an interim arrangement on account of alimony pendente lite starting from January, 2021 and shall go on paying month by month till the disposal of the said application. Such payments is to be made within 15th of each month.

It is, however, made clear that any payments made in terms of this order as well as the orders passed by any court of law shall be adjusted at the time of fixing the total amount to be paid on account of

alimony by the husband to the wife.

It is also made clear that parties shall be entitled to rely upon the documents filed by the husband before this Court by way of supplementary affidavit affirmed on December 18, 2020.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Hiranmay Bhattacharyya, J.)

