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24.06.2021
TN

CO No.11 of 2021

(Via video conference)

Sri Debabrata A Pal
Vs.
Smt. Swati Pal and another

Mr. Tulshi Das Roy

.... for the petitioner

Mr. Arijit Dey

.... for the opposite parties

Affidavit-of-service filed in court today be kept on record.

Both sides are represented through counsel.

Learned counsel for the petitioner contends that, although the petitioner-husband produced his salary slips, which shows that his present salary is Rs.18,000/- per month, which was never rebutted by any cogent documentary evidence by the opposite party-wife, the trial court, based on conjecture and surmise, granted alimony at the rate of Rs.10,000/- for the wife and Rs.10,000/- for the minor daughter of the parties, which is beyond even the monthly income of the petitioner.

Learned counsel further pointed out the relevant portions of the impugned order, where the court itself adverted to such salary slips but proceeded on the premise that previously the petitioner used to earn Rs.4.05 lakh from his earlier assignment in Bank of America, Gurgaon Branch. As such, the contention of the petitioner-husband was disbelieved primarily on such score.

Learned counsel appearing for the opposite party argues that it is not credible by any stretch of imagination that a person having an earning of Rs.4.05 lakh will suddenly stoop down to a salary of Rs.18,000/- per month. The petitioner, it is argued by opposite party, is a senior analyst with the TCS, Kolkata and has an M.B.A. Degree, which sufficiently indicate that the paltry salary shown by the petitioner is fictitious.

It is further contended by learned counsel for the opposite party that the petitioner has been sending cheques in a wrong name, which is different from the name of the opposite party as given in her bank account, for which the previous cheques regarding alimony could not be encashed by the petitioner at all.

The petitioner also contends that since there was a previous order of maintenance passed by the

criminal court, which was modified in appeal, which granted a lesser amount, the trial court ought not to have directed payment of such an exorbitant amount of maintenance per month.

Upon hearing the parties, at the outset it must be mentioned that the findings arrived at by the criminal court within the periphery of Section 125 of the Code of Criminal Procedure and/or any other law cannot be binding on the civil court. The well-settled principle of law is that the civil court shall independently decide the alimony to be granted to the wife and child on the yardsticks of Section 24 of the Hindu Marriage Act in a proceeding under the said section. Whatever amount is directed, both the amounts, granted respectively by the civil court and the criminal court, shall be adjusted with each other and the petitioner-husband, in effect, has to pay the larger amount of the two.

Hence, the order passed by the criminal court has no direct bearing in the present matter. Secondly, mere presumption on the basis of the previous income of the husband is just conjecture and not bare fact. It is possible that, in the pandemic times, where senior personnel of companies are losing their jobs, a person can settle

for a much lesser salary than he previously used to earn. A court of law cannot enter into the domain of surmise to draw baseless conclusions, particularly on the face of the specific salary slips produced by the petitioner-husband in the court below, which indicates that his current salary is only Rs.18,000/- per month, which was never rebutted by cogent evidence.

Also keeping in mind the requirements of the wife and the daughter of the petitioner as well as the status of the parties, a reasonable amount of maintenance for the wife would be one-third of the salary of Rs.18,000/-, which comes to Rs.6,000/- per month and Rs.4,000/- per month, which is a bare necessity for the daughter of the parties.

In view of the above observations, CO No. 11 of 2021 is disposed of by modifying the impugned order to the effect that the petitioner shall pay current alimony at the rate of Rs.10,000/- per month (Rs.6,000/- for the wife and Rs.4,000/- for the daughter) to the opposite party. Needless to say, such amount will be adjusted with the amount of maintenance directed by the criminal court. In the event the petitioner resorts to bank transfers and/or drawing of cheques, the name in which the transfer shall be made ought to be Swati Manna

and not Swati Pal, since the opposite party's account is in the former name.

The petitioner shall also clear all the previous dues, since the opposite party was unable to encash the previous cheques as indicated above, within one month from date. The current alimony shall be paid before the 10th day of every succeeding month, beginning from 10th of July, 2021 for the month of June, 2021. The due arrears upto May, 2021, shall be cleared off within a month from date.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)