

24.08.2021
(S/L-06)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 198 of 2021
With
CAN 1 of 2021

Anindya Dasgupta
-Vs-
Kakali Ghosh

Mr. Soujanya Bandyopadhyay,
..... For the petitioner.

Mr. Ajay Debnath,
Mr. Devranjan Das,
..... For the Opposite Party.

The present application under Article 227 of the Constitution of India is at the instance of the husband, the respondent of the matrimonial suit filed by the wife, the opposite party herein and is directed against the order dated December 23, 2020 passed by the learned Additional District Judge, 4th Fast Track Court at Barrackpore in the said matrimonial suit being Matrimonial Suit No. 1845 of 2016.

The learned Trial Judge by the order impugned has disposed of an application filed by the opposite party for alimony *pendente lite*.

Mr. Soujanya Bandyopadhyay, learned advocate appearing on behalf of the petitioner submits that the main grievance of the petitioner is that the opposite party, without any knowledge and sanction of the petitioner, has withdrawn a

sum of Rs. 5,00,000/- from the joint account of the parties and the petitioner filed an application praying that he may be allowed adduce further evidence to substantiate his said allegation but the learned Trial Judge, without considering the said prayer of the petitioner, has disposed of the said application for maintenance. He further submits that withdrawal of the said amount from the joint account without the knowledge and permission of the petitioner is a clear case of unlawful enrichment and being relevant to the issue of the right of the opposite party to get maintenance and if at all, the quantum thereof, according to him, the learned Trial Judge has exercised jurisdiction not vested in him in disposing the application for maintenance without disposing the said application of the petitioner.

Mr. Ajoy Debnath, learned advocate for the opposite party strongly denies the allegation of the petitioner that his client has withdrawn any amount from the said bank account without the permission and knowledge of the petitioner.

Heard learned advocates for the parties, perused the materials-on-record.

The alleged withdrawal of the money from the joint account of the parties is not a relevant issue to decide the application for alimony

pendente lite unless it proved that the money so withdrawn is being exploited to fetch regular income therefrom for the party applying for maintenance, but no such case has been made out by the petitioner, as such, the learned Trial Judge has not committed any error in exercise of his jurisdiction to dispose of the said application for alimony *pendente lite* without investigating the veracity of the said allegation of the petitioner.

The learned Trial Judge has fixed the quantum of alimony at the rate of Rs. 3000/- per month on a finding that the monthly salary of the husband is Rs. 10,000/-, said rate of alimony *pendente lite* is proportionate with the income of the petitioner.

This Court, for the aforesaid reasons, does not find any reason to interfere with the order impugned.

It is made clear that this order will not prevent the petitioner from seeking appropriate relief on his said allegation of unlawful enrichment in accordance with law before the appropriate Court of law.

The amount already paid by the petitioner to the opposite party in terms of the order passed in the matter or otherwise shall be adjusted against the arrear alimony to be paid.

The learned Trial judge is requested to expedite the disposal of the matrimonial suit.

C.O. 198 of 2021 is, thus, disposed of with the above terms without any order as to costs.

In view of the disposal of the main matter, the connected application being CAN 1 of 2021 for vacating the interim order has become infructuous and is dismissed, as such.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)