

9 & 10, DL,
09.09.2021
Ct.18, AJ.

C.O. 442 of 2018
(Through Video Conference)

Parvati Bhattacharyya
-Vs-
Capt. Rajib Bhattacharyya
with

C.O. 3035 of 2018
Capt. Rajib Bhattacharyya
-Vs-
Parvati Bhattacharyya

Mr. Kaushik Gupta,
Mr. Anirban Tarafder.

... for the petitioner in CO. 442/
2018 & for the opposite party
in CO. 3035 of 2018/wife.

Mr. Santanu Kumar Mitra,
Mr. Rajdeep Bhattacharya,
Mr. Amartya Pal.

... for the petitioner in C.O. 3035/
2018 & for the opposite party
in C.O. 442 of 2018/husband.

Affidavit-of-service filed by Mr. Gupta,
learned advocate appearing on behalf of the
petitioner/wife in C.O.442 of 2018, is taken on
record.

Mr. Mitra, learned advocate appearing on
behalf of the opposite party files affidavit-in-
opposition to C.O. 442 of 2018, reply thereto filed
by Mr. Gupta, are taken on record.

A common order of alimony pendente lite
is under challenge in both the revisional
applications, as such, are taken up together for
analogous consideration and disposal.

The parties are husband and wife. The
wife has filed the connected Matrimonial Suit No.

153 of 2013 praying dissolution of the marriage between the parties by a decree of divorce.

The said suit is pending before the 7th Court of the learned Additional District Judge at Barasat, District 24-Parganas (North).

In the said suit, the wife filed an application under Section 36 of the Special Marriage Act, 1954 praying alimony pendente lite @ Rs.1,00,000/- per month for self and @ Rs.50,000/- per month for each of the two daughters.

The learned Trial Judge, by the order impugned being Order No.33 dated December 15, 2017, has fixed alimony pendente lite @ Rs.10,000/- per month for the wife and @ Rs.15,000/- per month for each of the daughters.

The wife, being aggrieved by the quantum of alimony pendente lite fixed by the said order has filed one of the revisional applications being C.O. 442 of 2018. The husband is also aggrieved by the said order, as according to him, wife having independent income is not entitled to alimony and the daughters have attained majority, he has challenged the said order in the other revisional application being C.O. 3035 of 2018.

Mr. Gupta, learned advocate appearing on behalf of the wife submits that the husband is

admittedly a pilot by profession in a private airline and the amount of alimony pendente lite fixed by the learned Trial Judge does not commensurate with his social and financial status, the wife is entitled to the alimony pendente lite at much higher rate.

On the other hand, Mr. Mitra, learned advocate appearing on behalf of the husband submits that the wife is in earning hand and earns handsome amount being employed in a star hotel of Kolkata, as such she is not entitled to maintenance. He further submits that the daughters of the parties have attained majority; one of them is in employment, therefore, the direction for payment of alimony pendente lite to the daughters is not sustainable.

Having heard the learned advocate for the parties and on perusal of the records, it appears that the parties failed to substantiate their respective claims by cogent evidences before the learned Trial Judge, and the learned Trial Judge acting on some guess work, which is permissible under such circumstances has fixed the alimony pendente lite at the said rate.

The parties since are now interested to adduce evidences in support of their respective claims, the application for alimony pendente lite requires further consideration.

The order impugned is set aside with a direction upon the learned Trial Judge to decide the application under Section 36 of the Special Marriage Act, 1954 afresh in accordance with law.

The parties are at liberty to produce evidences in support of their respective claims.

The learned Trial Judge shall dispose of the said application on the basis of the guidelines laid down by the Hon'ble Supreme Court in the case of ***Rajnesh -Vs- Neha*** reported in **(2021) 2 SCC 324: AIR 2021 (SC) 569**.

The revisional applications being C.O. 442 of 2018 and C.O. 3035 of 2018 are disposed of with the above terms without any order as to costs.

The application for alimony pendente lite is required to be heard expeditiously as mandated under the proviso appended to the Section 36 of the Special Marriage Act, 1954,thereore, all endeavour shall be made to dispose of the same as expeditiously as possible.

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.)