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05.08.2021
TN

CO No.712 of 2020

Sri Shibanut Mukherjee
Vs.
Smt. Rajannya Mukherjee

(Via video conference)

Mr. Bhaskar Ghose,
Mr. Debabrata Karan,
Mr. Debojyoti Karan,
Mr. Debopriyo Karan,
Mr. Arjun Kshetri

.... for the petitioner

Mr. Debasish Mukhopadhyay,
Mr. Sagnik Chatterjee
Ms. Jeenia Rudra

.... for the opposite party

Learned senior advocate for the petitioner-husband contends that the trial court acted palpably without jurisdiction in granting alimony to the opposite party-wife, in view of the opposite party-wife having income sufficient to maintain herself. By placing reliance on the relevant portions of the evidence as well as the impugned order, learned senior counsel argues that the pre-condition of grant of alimony under Section 36 of the Special Marriage Act, 1954 is that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding.

Even apart from the educational qualification of the opposite party, learned counsel contends that, admittedly, the wife has been working with several concerns over the past years and getting sufficient income therefrom. It is pointed out that the opposite party-wife even admitted that she is at present employed as a salesperson of a particular concern. However, the wife did not disclose her current income. By overlooking such fact, the trial court merely proceeded on the basis of the income of the husband and to direct payment of alimony mechanically.

Learned counsel appearing for the opposite party-wife points out that the husband admitted in his cross-examination that his wife is entitled to maintenance.

That apart, it is contended that the wife has to maintain her ailing parents and needs to shift from her present accommodation at her parental house, which is inadequate for the requirements of the paternal family of the opposite party.

It is further contended that the educational qualification of the opposite party is irrelevant in the present context, since the wife has insignificant income, thereby entitling her to alimony from the petitioner-husband.

It is evident from the records that the statement of the petitioner-husband in his cross-examination, that it is true that his married wife is entitled to maintenance, was a stray comment, which cannot be read in isolation but has to be interpreted in the context of the previous statements made by the petitioner-husband in his cross-examination as well as the examination-in-chief.

Hence, such statement, by itself, cannot be culled out and relied on simpliciter to hold that the wife is entitled to alimony. The question of entitlement to alimony, moreover, is a mixed question of law and fact, the entitlement flowing not merely from the admission of the husband but from Section 36 of the Special Marriage Act.

Read in context, although the husband's income was recorded correctly by the trial court, it totally overlooked that the wife has been consistently earning substantial amounts of money as monthly income over the last few years.

That apart, although the opposite party-wife specifically admitted in her evidence that she is working at present as a salesperson of a particular concern, such submission was controverted by the

petitioner-husband, who alleged that she was better employed.

In view of such rebuttal, the onus lay on the opposite party-wife to prove her current income, as she has special knowledge of the same, within the contemplation of Section 106 of the Indian Evidence Act. Having shirked her duty to disclose such income, the trial court ought to have drawn an adverse inference against the wife for suppression of the best evidence of her current income.

Seeing the relevant facts in conjunction, the opposite party-wife is earning at present but suppressed the income. Even the previous income of the opposite party in the recent past indicates that she has sufficient capacity to earn, thereby leaving no scope for the court to hold that the wife does not have independent incomes sufficient to maintain herself.

In such view of the matter, the impugned order suffers from patent illegality and material irregularity.

Accordingly, CO No.712 of 2020 is allowed, thereby setting aside the impugned order as a whole.

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.)