

10.03.2021
Court No. 19
Item No.75
CP

C.O. 836 of 2020
with
CAN 1 of 2021

Sri Buddhadeb Jana
vs.
Smt. Lolita Jana

(via video conference)

Mr. Sharanya Chatterjee
Mr. Hemanta Kr. Das
Mr. N. Majhi

.....for the petitioner.

Mr. Somnath Mukherjee
Ms. Papiya Shaw

...for the respondent.

This revisional application has been filed by the husband being aggrieved by an order dated November 28, 2019, passed in Misc. Case No. 293 of 2019, arising out of Mat. Suit No. 3397 of 2018, pending before the learned Additional District Judge, 1st Court, Alipore.

The petitioner is aggrieved by the quantum of maintenance awarded by the learned court below to the extent of Rs.4000/- per month for the wife and Rs.4000/- per month for the minor daughter. According to the petitioner, the learned court below has not considered any of the documents filed by the petitioner with regard to the income of the petitioner. It is further stated that evidence, both oral and

documentary evidence had been adduced before the learned court below which were not considered.

I am in agreement with the learned advocate for the petitioner to the extent that the order passed by the learned court below does not reflect the satisfaction of the learned court with regard to the income of the husband.

The learned advocate for the respondent/wife appears before this court and submits that even if the learned court below did not record the income of the husband, the fact that the husband had taken a loan from a bank proves that he must have had sufficient income and also submitted income tax return, otherwise he would not have made the eligibility criteria for getting such loan from the bank.

Learned advocate for the husband refutes such contention.

In any event, the Hon'ble Apex Court in the matter of *Rajnish v. Neha & anr.*, in Criminal Appeal No. 730 of 2020, dated November 4, 2020 has laid down certain criteria which have to be fulfilled by the parties in a proceeding for maintenance. The criteria for assessing the quantum of maintenance has been laid down by the Hon'ble Apex Court which requires affidavits of assets to be filed by the parties. In the said decisions the Hon'ble Apex Court has elaborately discussed all the decisions so far passed

on the issue and has laid down the method for calculating the quantum of maintenance.

The contention of the petitioner/husband that the petitioner belongs to economically weaker section and, as such, is not required to file the affidavit of assets is a matter to be adjudicated by the learned court below.

Under such situation, even if the petitioner can satisfy the learned court that he is not required to file an affidavit of assets, coming from the economically worker section, the quantum of maintenance to be paid by the husband should be decided as per the other criteria laid down by the Hon'ble Apex Court in the said judgment.

The order impugned is set aside and quashed.

The matter is remanded back to the learned court below for a fresh decision by taking into account the oral and documentary evidence adduced by the respective parties. The aspects about the financial requirement of the wife and the child, not only for the day to day expenses but also medical expenses, a roof above their head and education of the child, should also be taken into account vis-à-vis the income of the husband. The said application shall be disposed of within three months from the date of communication of this order.

In the meantime, the husband shall go on paying Rs.5000/- month by month every month on and from April, 2021 within 10th of every succeeding month.

With regard to arrears, the calculation of which is disputed by the learned advocate for the petitioner, it is directed that the husband shall pay Rs.30,000/- to the wife upfront within four weeks from date without prejudice. Payment and acceptance of the same shall be without prejudice.

This interim arrangement will continue till the disposal of the Misc. Case.

This court has not gone into the merits of the case and the learned court below shall proceed with the Misc. Case in accordance with law and on the basis of the records and evidence before it as also the law applicable in the present secenario.

The revisional application is disposed of. There shall be no order as to costs.

With the disposal of the revisional application, connected application being CAN 1 of 2021 is also disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)