

27th July,
2021
(AK)
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C.O. 1004 of 2021

Smt. Soma Panda
Vs.
Sri Pradip Kumar Panda

(Via video conference)

Mr. Amitabha Ghosh
...For the Petitioner.

Mr. Amitava Pain
Mr. Partha Pratim Mukhopadhyay
...For the Opposite Party.

The petitioner/wife contends that the trial court misinterpreted an order dated April 8, 2014 passed by a co-ordinate Bench of this court in C.O. 1413 of 2013, which affirmed an order of the trial court, whereby Rs.5,000/- was granted in total as maintenance for the wife and the minor child of the parties.

Learned counsel contends that, on a proper interpretation of the co-ordinate Bench order dated April 8, 2014, it is conveyed that the learned Single Judge intended to interpret the order impugned therein to the effect that the said sum of Rs.5,000/- would be in addition to an equivalent amount granted by the criminal court under Section 125 of the Criminal Procedure Code, taking the total to Rs.10,000 per month in lieu of maintenance.

A subsequent order was passed by a different coordinate Bench on February 13, 2020 in C.O. 3164 of 2019, which directed the trial court to ascertain the amount of arrears on the basis of the previous order, as indicated above.

However, the trial court proceeded on the premise that the alimony required to be paid was Rs. 5,000/- in total for the wife and the child, which was patently erroneous.

Learned counsel appearing for the opposite party/husband specifically contends that there is no scope of further interpretation of the order dated April 8, 2014, passed in C.O.1413 of 2013, as the learned Single Judge specifically affirmed the order of the trial court impugned in the said revision, whereby a total amount of Rs.5,000/- was granted for both the wife and the child.

In the absence of any ambiguity in the conclusion of the said order, it is argued, there is no scope for reading between the lines into the said order.

Upon hearing both sides, it is evident that the entire matter hinges on an appropriate interpretation of the order dated April 8, 2014 passed by the learned Single Judge in C.O. 1413 of 2013.

Shorn of all details, the ratio of the order was specified in inner pages 2 and 3 of the said order. The learned Single Judge was pleased to hold that if the maintenance awarded by the courts (the criminal court as

well as the Civil Court which were referred to therein), then it will come out that the opposite party/husband is to pay a sum of Rs.10,000/- per month in total towards maintenance during pendency of the matrimonial suit as well as the miscellaneous case under Section 125 of the Code of Criminal Procedure. In such view of the matter, the co-ordinate Bench refused to interfere with the order impugned therein.

Hence, there is no question of further interpretation of the order, since there cannot be any question raised on the issue of the actual maintenance granted by the co-ordinate Bench.

It is evident from the order dated April 8, 2014 that the learned Single Judge categorically construed the order impugned therein to have granted an additional amount of Rs.5,000/- as alimony for the wife and child, over and above the maintenance granted, of equivalent amount, by the criminal court. Only on such premise did the said learned Single Judge refuse to interfere with the order challenged therein.

Hence, there is no doubt that the alimony granted by this court in C.O. 1413 of 2013 was Rs.10,000/- per month for the wife as well as the child and not Rs.5,000/- as construed by the trial court in the impugned order.

At this juncture, learned counsel for the opposite party/husband submits that it will be an extreme burden on his client to clear off the arrears of alimony within a

short period, at the rate of Rs.10,000/- per month, more so since the suit is at the final hearing stage.

However, the mere stage of the suit cannot be a relevant consideration in the present case, since it is well-settled that all arrears of alimony are to be cleared by the husband for his suit to be decided finally.

Hence, C.O. 1004 of 2021 is allowed, thereby setting aside the impugned order bearing Order No. 87 dated February 12, 2021 passed by the Additional District Judge, Third Court at Howrah in Matrimonial Suit No. 770 of 2009 and directing the trial court to re-calculate the arrears payable by the husband, upon adjusting the amounts already paid by the opposite party/husband to the wife, treating the monthly alimony payable by the opposite party to be Rs.10,000/-, in composite, for the wife and the child.

The trial Judge shall re-calculate in terms of the above direction, the entire arrears of alimony at the monthly rate of Rs. 10,000/- and shall further consider the scope of granting installments to the opposite party/husband for clearing such arrears, upon hearing both sides.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)