

S/L 8 & 9
22.09.2021
Court. No. 7
sb

CO 1624 of 2021
Susmita Dey (Das)
Vs.
Kaushik Das

With

CO 1360 of 2021
Kaushik Das
Vs.
Susmita Dey Das
(Via Video Conference)

Mr. Rabindranath Mahato, Advocate
Ms. Amrita Shankar Ray, Advocate

... for the petitioner in CO 1624 of 2021

Mr. Jagabandhu Roy, Advocate
Ms. Manasi Roy, Advocate
Ms. Madhuri Das, Advocate

... for the opposite party in CO 1624 of 2021

Mr. Jagabandhu Roy, Advocate
Ms. Manasi Roy, Advocate
Ms. Madhuri Das, Advocate

... for the petitioner in CO 1360 of 2021

Mr. Rabindranath Mahato, Advocate
Ms. Amrita Shankar Ray, Advocate

... for the opposite party in CO 1360 of 2021

Both the applications are taken up together since the husband and the wife have challenged the order dated March 30, 2021 passed by the Additional District Judge, (Re-designated Court), Paschim Midnapore in Judicial Misc. Case No. 91 of 2020 directing the husband to pay *alimony pendente lite* and litigation cost to the wife.

The husband has filed CO 1360 of 2021 claiming that the amount of alimony as well as litigation cost directed to be paid by the learned Trial Judge is excessive. On the other hand, the wife has filed CO 1624 of 2021 claiming that the alimony and litigation cost is not sufficient and the same requires to be enhanced.

I have heard the learned advocates for the parties and perused the materials on record. Record reveals that the gross income of the husband is Rs. 26,720/- as per the pay slip for the month of January 20, 2021 which was produced by the husband before the learned court below.

The learned Trial Judge after taking into consideration the admissible deductions from the gross salary held that Rs. 8,000/- being $\frac{1}{3}$ rd of the salary is sufficient for the monthly maintenance of the wife. One time litigation cost of Rs. 15,000/- was also directed to be paid by the husband to the wife by the said order.

Mr. Mahato, the learned advocate appearing for the wife submits that the learned Trial Judge directed payment amount of alimony with effect from the date of the impugned order without appreciating that the same is to be paid with effect from the date of filing of the application under Section 24 of the Hindu Marriage Act. Mr. Mahato further submits that the amount of alimony as well as the litigation cost is insufficient to meet the daily necessities of the wife.

Mr. Roy, the learned advocate appears for the husband and submits that the learned Trial Judge erred in

law by granting Rs. 8,000/- on account of *alimony pendente lite* when the accepted norm is $\frac{1}{5}$ th of the net salary. He further submits that the husband has other liabilities as well as he has to maintain his aged mother. He further submits that the husband had taken a loan for the medical treatment of the wife and he has to repay the said loan and as such it is not possible for the husband to pay the *alimony pendente lite* as well as the litigation cost as directed by the learned Trial Judge.

The husband has not produced any document in support of his claim that he had taken loan for the medical treatment of the wife and he is repaying the said loan.

It is not in dispute that the mother of the husband is receiving family pension amounting to Rs. 15,000/-. Thus the contention of Mr. Roy that the mother is entirely dependent on his son cannot be accepted.

There is no fixed rule that the *alimony pendente lite* has to be $\frac{1}{5}$ th of the net salary. In the instant case the learned Trial Judge after taking into consideration the salary of the husband as well as the other materials on record, fixed the *alimony pendente lite* being $\frac{1}{3}$ rd of the salary of the husband. In my considered opinion the amount of alimony and litigation cost fixed by the learned Trial Judge in the facts of the instant case is reasonable. There is no infirmity in the order inasmuch as the amount of alimony and litigation cost is concerned.

However, it is well-settled that alimony is to be paid with effect from the date of filing of the application unless there are exceptional circumstances where the Court may direct alimony to be paid from the date of the order. No such exceptional case has been made out by the husband in the instant case nor there is any finding returned by the learned Trial Judge in support of alimony to be paid from the date of the order. This Court holds that the alimony *pendente lite* at the rate fixed by the learned Trial Judge shall be paid by the husband to the wife with effect from the date of filing of the application under Section 24 of the said Act.

Mr. Mahato has drawn the attention of the Court to the fact that the learned Trial Judge while granting litigation cost has specified that the same is a one time litigation cost only. This Court holds that the litigation cost directed to be paid by the impugned order shall be for the purpose of meeting litigation expenses for the time being. The order impugned is modified only to the extent as indicated hereinbefore.

This Court therefore directs that the current alimony, at the rate fixed by the learned Trial Judge, starting from the month of October 2021 is to be paid by the husband to the wife within November 15, 2021 and the husband shall continue to pay alimony month by month thereafter within 15th of each succeeding English calendar month. The husband shall also pay the arrear alimony for the period starting from the date of filing of the said application at the aforesaid rate

till September 30, 2021 by three equal installments. The first of such installment on account of arrear alimony is to be paid by the husband to the wife on or before October 8, 2021 and the balance two installments shall be paid on or before December 15, 2021 and January 15, 2022. Insofar as the amount of litigation cost is concerned, the husband shall pay the same to the wife on or before November 15, 2021.

With the above directions CO 1624 of 2021 and CO 1360 of 2021 stand disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Hiranmay Bhattacharyya, J.)