

S/L 10
27.09.2021
Court. No. 07
suvayan

CO 1453 of 2021
(Through Video Conference)

Rupak Das
Vs.
Trishita Das (Halder)

Mr. Probal Kr. Mukherjee
Ms. Shebatee Datta

...for the Petitioner

Mr. S. T. Mina
Mr. Rajdeep Bhattacharya
Ms. Sabnam De

...for the Opposite Party

The respondent in a matrimonial suit filed under Section 27 of the Special Marriage Act has challenged an order no. 23 dated July 17, 2021 passed in Miscellaneous Case no.318 of 2019 filed under Section 36 of the Special Marriage Act arising out of matrimonial suit no. 3142 of 2018.

By the order impugned the learned Trial Judge directed the husband/petitioner herein to pay a sum of Rs.15,000/- per month to the wife/opposite party herein on account of the maintenance for the minor son.

Mr. Mukherjee, learned Senior Advocate appearing for the husband/petitioner draws the attention of this Court to the averments made in the application under Section 36 of the Special Marriage Act more particularly paragraph 15 thereof wherein the breakup of the expenses for the minor son is given.

Mr. Mukherjee, submits that the learned Trial Judge after arriving at a finding that a sum of Rs.15,000/- per month is necessary to meet the educational as well as other expenses of the son, directed the husband to pay the entire amount without appreciating that the wife also has independent source of income and is, therefore, under an obligation to contribute towards the expenses on account of the minor. Mr. Mukherjee, relies upon a judgement of the Hon'ble Supreme Court of India reported at (2021) 2 Supreme Court Cases 324 (*Rajnesh Vs. Neha & Anr.*) and submits that in case the wife is having her independent income the educational as well as other expenses for the child is to be shared proportionately between the parties.

Per contra, Mr. Mina, learned Advocate for the opposite party submits that though in the application a sum of Rs.18,000/- was claimed on account of the maintenance of the minor son but due to passage of time the educational as well as other expenses of the minor son has increased by leaps and bounds. He submits that the income of the husband has also increased substantially in the meantime. According to him, the learned Trial Judge was justified in directing the husband to pay a sum of Rs.15,000/- on account of maintenance of the minor son.

I have heard the learned Advocate for the parties and perused the materials on record. This Court while exercising jurisdiction under Article 227 of the Constitution of India has to decide as to whether the learned Trial Judge was justified

in passing the order impugned on the basis of the materials that were available on record. It appears from the application under Section 36 of the Special Marriage Act that the wife has given a breakup of the expenses namely educational, fooding, dresses, etc. for the son for the period from January 2019 to June 2019. The wife claimed that the expenses for the said period was Rs.17,700/- per month. Record reveals that the application under Section 36 was filed on July 1, 2019. Thus the breakup of the expenses for the month of January 2019 to June 2019 can be considered to be the expenses which the wife claimed to have incurred on account of the maintenance of the minor son at the relevant point of time when such application was filed.

The wife is a teacher of a High School. It is evident from the pay slip for the month of December 2020 that the net pay of the wife is Rs.52,628/-. The net pay of the husband for the month of December 2020 is Rs.57,956/-.

In view of the judgment delivered by the Hon'ble Supreme Court of India in Rajnesh Vs. Neha & Anr. (Supra), the expenses of the minor son in the instant case is to be shared proportionately between the parties as the wife has sufficient income.

After taking into consideration the net salary of the parties as well as the expenses on account of the son and the decision of the Hon'ble Supreme Court of India that in case the wife is working and having sufficient income, the expenses on account of the child is to be shared

proportionately between the parties, this Court is of the considered view that a sum of Rs.11,000/- per month is to be paid by the husband to the wife for the maintenance of the minor child. Since the wife claims that a sum of Rs.18,000/- is required for the maintenance of the minor son, the balance sum of Rs.7000/- is to be borne by the wife/opposite party herein.

For the reasons as aforesaid, this Court holds that the Trial Judge was not justified in directing the husband to pay maintenance at the rate of Rs.15,000/- per month for the son.

The learned Trial Judge, by the order impugned, directed the husband to pay arrear maintenance from the month of July 2019 taking into consideration the date of filing of the application, and directed the husband to pay the arrear maintenance within three months from the date of passing of the order. The arrear maintenance for the son at the rate of Rs.11,000/- per month starting from the month of July 2019 till September 2021 which comes to Rs.2,97,000/- shall be paid by the husband to the wife by three installments. The first two installments shall be of Rs.1,00,000/- each and the balance amount shall be paid in the third installment. The first installment on account of arrear maintenance shall be paid by the husband to the wife on or before October 8, 2021. The second installment on account of the arrear alimony shall be paid on or before November 22, 2021 and the last installment shall be paid on

or before December 22, 2021. The current alimony for the son starting from the month of October 2021 shall be paid within November 10, 2021 and the husband shall continue to pay the current alimony month by month thereafter within 10th of each succeeding English calendar month.

The learned Advocate for the wife/opposite party submits that the husband may be directed to pay alimony on account of the son both arrears as well as current to the Bank account of the wife and the learned Advocate for the husband on instruction submitted that such payments shall be made to the Bank account of the wife. Details of the Bank account shall be furnished by the learned advocate for the wife to the learned Advocate of the husband on or before September 29, 2021.

The order impugned thus stands modified only to the extent indicated herein before.

Co 1453 of 2021 accordingly stands disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)