

AD. 5 & 6.
July 6, 2021.
MNS.

C. O. No. 2932 of 2019

Sukanya Das
Vs.
Arindam Das

with

C. O. No. 2637 of 2019

Arindam Das
Vs.
Sukanya Das

(Via video conference)

Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta,
Mr. Saptarshi Kumar Mal

... for the petitioner in
C. O. 2932 of 2019 &
opposite party in
C. O. 2637 of 2019.

Ms. Lopita Banerji,
Mr. Avijit Chakraborty

... for the petitioner in
C. O. 2637 of 2019 &
opposite party in
C. O. 2932 of 2019

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C. O. 2932 of 2019 and C. O. No. 2637 of
2019 have been filed respectively by the husband
and the wife against the self-same order of
alimony granted by the court below under Section
36 of the Special Marriage Act, 1954 (hereinafter
referred to as the Act of 1954). The amount

granted to the wife was to the tune of Rs.15,000/- (Rupees fifteen thousand) only per month for herself and Rs.20,000/- (Rupees twenty thousand) only per month for her minor son from the date of filing of the petition, that is, since March 13, 2015.

Learned counsel appearing for the husband contends that the wife has sufficient income of her own to maintain herself and the husband has already been paying an amount of Rs.8,000/- (Rupees eight thousand) only per month by way of alimony to the wife, pursuant to an order passed in a separate proceeding under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act of 2005").

Moreover, it is contended that the husband himself is having to reside in a rented accommodation and to incur such rents while the wife has been accommodated along with the child on the second floor of the matrimonial home of the wife, thus, taking care of her requirements regarding accommodation.

That apart, learned counsel contends that the entire education expenses of the child is

being borne by the husband/father and, as such, no further payments are required on that score.

Learned counsel appearing for the wife argues that the amount directed by the forum under the Act of 2005 is meager in comparison to the status of the husband, who earns substantial amounts of money and has also defaulted in paying some of the amounts of monthly maintenance as directed by the other forum.

It is further submitted that the education expenses and other expenses of the child are much more than what has been directed by the court below. As such, the wife seeks an increment in the amounts of alimony granted to the wife as well as to the child.

Upon hearing learned counsel appearing for the parties and going through the materials on record, it is evident that sufficient documents in support of the alleged respective incomes of the parties were not disclosed in the court below. There have been varying allegations at different points of time regarding the respective incomes of the parties. Moreover, although it is seen from the record that the husband has already been paying a certain monthly amount to the wife by way of maintenance for the wife as well as the

child, in the absence of any specific affidavit-of-assets and income and supporting documents by the parties, as directed by the Supreme Court in ***Rajnish Vs. Neha and Another***, reported at ***(2021) 2 SCC 324***, it is not possible for either the court below or this Court to ascertain the actual financial requirements and incomes of the parties.

However, keeping in mind the fact that the parties are required to share the costs of the child in the ratio of their respective incomes, it would be reasonable if the husband is directed to pay Rs.35,000/- (Rupees thirty five thousand) only per month covering the entire costs of the child (including education expenses and other ancillary charges) and the amount of Rs.8,000/- (Rupees eight thousand) only per month for the wife for the time being on an *ad hoc* basis..

In view of the absence of appropriate and adequate documents before the court below to arrive at definite conclusions, it would be a futile exercise to depend on conjecture and surmise to arrive at the actual requirement of the parties and their respective incomes.

Accordingly, C. O. No. 2932 of 2019 and C. O. No. 2637 of 2019 are disposed of by directing the Additional District Judge, Third Fast

Track Court at Barasat, District- North 24 Parganas, to rehear and dispose of afresh the alimony application filed under the Act of 1954 pending at the behest of the wife, upon granting opportunity to both the parties to file their respective affidavits and documents of income and assets as well as other relevant supporting documents, in consonance with the judgment rendered by the Supreme Court in ***Rajnesh Vs. Neha & Another***, reported at **(2021) 2 SCC 324**.

Such affidavits and documents shall be filed by the parties within a fortnight from communication of this order to the trial court. If necessary, the trial court shall permit the parties to lead evidence/further evidence on such affidavits and documents for the limited purpose of disposing of the alimony application. In any event, the said alimony application shall be disposed of afresh by the trial court within three months from the date of communication of this order to the court below. It is expected that the parties shall cooperate with the court in early disposal of the matter by not seeking unnecessary adjournments.

The husband shall go on paying Rs.35,000/- (Rupees thirty five thousand) only per

month on an *ad hoc* basis to cover the expenses of the child and Rs. 8,000/- (Rupees eight thousand) only per month to the wife to cover the expenses of the wife for the time being. Such payments shall be made on a monthly basis, the first of which instalments shall be made by the 15th of August, 2021 for the month of July, 2021 and thereafter for every month by the fifteenth day of each succeeding month, subject to final adjudication by the court below.

It is made clear that this *ad hoc* direction is merely on a temporary basis and the amount paid shall be adjusted from the amount of alimony, if ultimately granted by the court below to the wife. The trial court shall be free to proceed in adjudicating the alimony application independently on its own merits, without being influenced in any manner by any of the observations made herein apart from the specific directions given in this order regarding compliance of the judgement of the Supreme Court.

The wife shall be free to accept such payments made by the husband. Such payment and acceptance shall be without prejudice to the

rights and contentions of the parties in the proceeding pending before the court below.

It is further clarified that, till disposal of the application under the Act of 1954, the husband shall not be required to pay any further amount directly to the school in lieu of education and other charges for the child. Such amounts shall be covered for the time being by the *ad hoc* amount of Rs.35,000/- (Rupees thirty five thousand) only as directed by this Court. That apart, the payments made pursuant to this order shall be adjusted with any other payment being made by the husband at the present juncture pursuant to any order of any other judicial forum and/or otherwise and the husband shall go on paying the largest amount directed, among the aforesaid several directions, if any, of different forums.

The parties as well as the court below shall act on the written communication of the learned advocates of the parties, coupled with server copy of this order, without insisting upon prior production of a certified copy thereof.

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.)