

12.03.2021
Court No. 19
Item No.43
CP

CAN 1 of 2021
in
C.O. 2888 of 2019

Varun Rungta
vs.
Neha Rungta nee Maskara

Mr. Siddhartha Lahiri
Mr. Subhasish Saha

.....for the petitioner.

Ms. Urmila Chakraborty
Mr. Santosh Kanodia

....for the applicant/respondent.

Re: CAN 1 of 2021

CAN 1 of 2021 is an application for vacating the interim order dated September 20, 2019, passed by this court in C.O. 2888 of 2019. The applicant has prayed for vacating of the ad-interim order of stay of the order impugned by which maintenance pendente lite @ Rs.8000/- per month was granted in favour of the applicant/wife.

It is submitted that apart from the one time ad hoc payment of Rs.15000/- that was paid sometime in January, 2020, the applicant has not been paid any maintenance in view of the order passed by this

court and the applicant has been passing her days in penury.

Although the matter is appearing under the heading 'Application', by consent of the parties the main revisional application is taken up for hearing.

From the order impugned, it appears that the learned court below did not come to a specific finding as to the income of the husband and also did not deal with any evidence from which it could be safely presumed that the husband had sufficient income to pay Rs.8000/- per month to the wife as maintenance pendente lite.

It is further urged by the learned advocate for the husband/petitioner in the revisional application, that the petitioner had filed certain documents by way of 'Firisti' from which it would be evident that the petitioner did not earn more than Rs.7000/- per month as a consultant for certain companies.

To refute such contention, it is urged by the learned advocate for the wife that the persons granting the certificates of income are cousins of the husband and such certificates have been prepared in collusion and they have no value at all.

It is further stated by the husband that without a specific finding on the income of the husband, the learned court below could not have directed payment of Rs.8000/- per month.

The learned advocate for the wife/respondent has taken the court through the averment in the application for maintenance from which, it appears that the husband was the only son of a businessman and the father of the husband had proprietorship businesses. It is contended that the fact that the husband did not have his own business would not exonerate him from paying maintenance to his wife because he was a part and parcel of the family business and had sufficient income of his own.

Having considered the rival contentions, I agree with the learned advocate for the petitioner that the evidence which was on record was not dealt with by the learned court below. In my opinion, the income of the husband is within his personal knowledge. The husband has the obligation to prove his income on the basis of the documents submitted by the husband. Thus the onus is on the husband to prove the documents, namely income certificates prepared by and signed by the Todis' and also prove the fact that he did not have income from his father's business, by adducing proper evidence. The wife should also get a chance to cross examine such persons.

Under such circumstances, the order impugned is set aside.

The matter is remanded back to the learned court below for decision on the application under Section 24 of the Hindu Marriage Act, afresh. The learned court below shall dispose of the said application within three months from the next date fixed.

Parties will be at liberty to pray for an opportunity to adduce evidence as directed hereinabove.

Till the disposal of the said application by the learned court below, the husband shall pay to the wife an ad hoc amount of Rs.35000/-. Such amount shall be paid within two weeks from date.

In case of default, the wife will be at liberty to take appropriate steps.

With the above observation 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.)