

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. No. 4314 of 2019

(Via video conference)

**Ranjan Banerjee
-Vs.-
Smt. Chaitali Banerjee**

Mr. Sudipto Dasgupta,
Mr. Saikat Sutradhar
...for the petitioner

Mr. Sabyasachi Mukhopadhyay
...for the opposite party

At the outset, learned counsel appearing for the opposite party-wife submits that, due to the pandemic situation, the opposite party could not file her affidavit-in-opposition to the present revisional application.

However, it appears from the pleadings and annexures to the revisional application that the relevant documents, produced before the trial court, have all been annexed to the application. In applications under Article 227 of the Constitution of India, there is little or no scope for considering further facts and/or evidence. Hence, I am proceeding with the final hearing of the revisional application on the basis of the

materials-on-record, by dispensing with the necessity of filing affidavits.

It is argued by learned counsel for the petitioner-husband that, although the opposite party-wife admitted that she is working in a kindergarten school but the husband is armed with documents to show that she is teaching in an ICSE Board affiliated school in Classes XI and XII. However, such documents were not produced before the court below.

It appears from the impugned order that the trial court proceeded merely on conjecture and surmise, without directing the parties to file affidavits of their assets and salaries including other details, as opined by the Supreme Court in the recent case of *Rajnesh vs. Neha & Anr.*, reported at (2021) 2 SCC 324. Hence, the impugned order is vitiated due to non-compliance of the directives incorporated in the said report.

That apart, since the present opposite party-wife failed to produce her own salary slip, although admitting that she is working in an English medium kindergarten school, adverse inference ought to have been drawn against the wife for suppression of her income, vis-à-vis the husband who has produced his salary slips.

It is settled law that alimony is granted to the spouse under the provisions of Section 24 of the Hindu Marriage Act, 1955, only when the said spouse does not have any income sufficient to maintain herself/himself.

In the present case, in view of absence of any document being produced on the part of the wife as well as lack of affidavits of assets and other incomes of either of the sides, the impugned order was passed *de hors* the law and without jurisdiction.

Since, pursuant to interim order of this Court, a total amount of Rs.30,000/- has already been paid by the petitioner-husband on *ad hoc* basis to the opposite party-wife, the said amount will suffice to take care of the immediate needs of the opposite party-wife, if any.

C.O. No. 4314 of 2019 is disposed of by setting aside the impugned order dated November 01, 2019 and by directing the Additional District Judge, Fifth Court at Barasat, District-North 24-Parganas to hear afresh Misc. (Matrimonial) Case No. 22 of 2019, upon giving adequate opportunity to both sides to file their affidavits of assets and incomes as well as other documents, if relevant, and to adduce further evidence, if necessary.

Upon such opportunity being given, the Additional District Judge, Fifth Court at Barasat, District-North 24-Parganas, shall dispose of Misc. (Matrimonial) Case No. 22 of 2019, arising out of Matrimonial Suit No. 17 of 2019, as expeditiously as possible, positively within two months from the date of communication of this order to the court below.

The learned trial judge shall adjudicate the alimony application afresh in the light of the observations made above and shall act on the written communication of the learned advocates of the parties and/or 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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)