

S/L 30
05.01.2021
Court. No. 19
GB

C.O. 1623 of 2020

Smt. Manju Mahato
Vs.
Sri Baijnath Mahato

(Through Video Conference)

Mr. Somnath Roy Chowdhury.

...for the Petitioner.

Mr. Subhasis Panchal.

...for the Opposite Party.

Affidavit-of-service filed in Court today, be kept with the record.

This revisional application has been filed challenging the Order No.69 and Order No.71 dated December 15, 2020 passed by the learned Additional District Judge, 3rd Court at Howrah in Matrimonial Suit No.311 of 2013.

By the order impugned, the learned court below rejected an application filed by the wife/petitioner for enhancement of the monthly maintenance from Rs.5,500/- to Rs.12,000/- per month on account of changed circumstances. The reason assigned in the application was that the maintenance *pendente lite* at the rate of Rs.5,500/- had been awarded by the learned court on December 5, 2015. Thereafter, the salary of the husband had increased considerably and under the changed circumstances the wife was entitled to enhanced maintenance. It was further stated that the husband has also stopped paying EMI of the flat in

which the wife resides. The wife apprehends that at any time she would be in the streets and, as such, the monthly maintenance should be enhanced taking into consideration this aspect as well.

Mr. Panchal, learned advocate appearing on behalf of the husband/opposite party submits that this revisional application has been filed only to delay the disposal of the suit, although there are numerous orders of this Court directing expeditious disposal of the suit. He further submits that the wife has an income of her own and such changed circumstance should also enure to the benefit of the husband.

I have heard the learned counsel for the respective parties. With regard to the prayer for reduction of the maintenance *pendente lite*, the husband has filed an application before the learned court below, which was rejected. The husband has not challenged the said order and as such that order has attained finality.

Now, the question arises as to the propriety of the order rejecting the application for enhancement of maintenance. From the impugned order, it appears that the learned court below considered the entire background of the case, but rejected the application in a single line with the observation that the circumstances did not warrant enhancement of maintenance. According to the learned court below, the circumstances as pleaded in the application for enhancement did not warrant increase in the monthly

maintenance. The order suffers from non-application of mind and is devoid of reasons. The said order is set aside and quashed. The learned court below is directed to rehear the application for enhancement upon allowing the parties to adduce both oral and documentary evidence only on the point of enhancement and the changed circumstances. The said application should be disposed of within a month from date of communication of this order.

It is made clear that neither of the parties will pray for any adjournments before the learned court below unless prevented by very serious reason. It is also made clear that the learned court below shall take note of any dilatory tactics that may be practiced by the parties to delay the disposal of the suit. This Court has not gone into the merits of the claim of the wife and the learned court below will dispose of the application for enhancement on its own merits and on the basis of the pleadings and the evidence that will be forthcoming pursuant to this order. It is further made clear that the suit shall proceed expeditiously. The Court is informed that the suit is at the stage of cross-examination of P.W.1. This order will not prevent to the court to proceed with the suit on the next date fixed, if the husband has paid the maintenance as per the direction of the court. Parties are at liberty to appear before the learned court below and request the court to fix a date for hearing of the application for enhancement. It is expected that the suit should be disposed of within the next four months. All parties

including the learned court below shall act on the basis of the server copy of this order.

The revisional application is disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)