23-11.2021
Court No.1
FB/gsd
(9).

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
(Via Video Conference)

CO 49 of 2021

Ghanayshyam Chettri
Vs.
Babita Chettri

Mr. Bikramaditya Ghosh
Mr. Ujjwal Luksom
… For the Petitioner.
Mr. Kunaljit Bhattacharjee
Mr. Abhisek Palit

. . .For the O.P.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Under challenge in this application under Article 227 of the Constitution of India is the order dated 20th of March, 2020 passed by the Learned Additional District and Sessions Court, Kurseong in Matrimonial Suit No. 27 of 2016.

The Learned Civil Court was pleased to decide the claim for *alimony pendente lite* filed by the present O.P./the wife under Section 24 of the Hindu Marriage Act.

The Learned Civil Court, *inter alia*, found that since neither party has adduced any evidence and only resorted to oral submissions, *it can safely be presumed that the husband does have income more than what he is claiming and the wife does not have any income*.

Prior to so holding, the Learned Civil Court recorded the contention of the O.P./wife that the present petitioner/husband, being a contractor of the National Hydel Power Corporation (for short, NHPC), Kalijhora has an income to the tune of Rs. 1 lakh 50 thousand and, accordingly, the prayer for *alimony pendente lite* was made before the Learned Civil Court for 1/3rd of the monthly income of the husband along with the litigation cost.

Learned Counsel for the present petitioner/the husband submits that the evidence by way of income tax returns of the present petitioner for the three previous financial years have been annexed to this application and, from such evidence it is clearly visible that the income of the present petitioner is not more than Rs. 6 lakhs per annum.

The present petitioner is maintaining the only son of the couple who is presently aged about 20 years, as well as his old parents.

Accordingly, it is submitted that the *alimony pendente lite* granted by the Learned Civil Court is too steep.

Mr. Bhattacharjee, Learned Counsel, appearing for the present O.P./wife points out that since no evidence was adduced and having regard to the husband's current employment status, the *alimony pendente lite* granted by the Learned Civil Court is fair.

Heard.

Considered.

This Court is required to notice the official income tax returns now attached with the revisional application and, from the official returns this Court, at this stage, is not in a position to cast aside the claim of the present petitioner/husband that his annual income does not exceed Rs. 6 lakh per annum.

This Court must also notice that in the absence of such evidence produced before the Learned Civil Court, the Learned Civil Court acted on the presumption that the husband earned more than meets the eye.

This Court, therefore, finds that the distribution of income should be such as would be fair to the present position of both the parties.

It is undeniable that the child is brought up by the husband and the aged parents are equally dependant on his income. The wife is claiming *alimony pendente lite* for herself alone.

In the above view of the matter, the order of the Learned Civil Court dated 20th March, 2020 stands modified to the extent that on and from the 7th day of December, 2021 and thereafter on the 7th of each succeeding English Calendar Month, the wife shall receive the *alimony pendente lite* of Rs.20,000/- per month for the present.

The litigation cost granted to the respondent/wife stands however not touched and shall therefore remain as granted by the Learned Civil Court.

It is requested that Section 24 application be decided expeditiously by the Learned Civil Court.

CO 49 of 2021 stands accordingly **disposed of**.

All parties to act on the server copy of this order duly obtained from the official website of the Hon'ble High Court Calcutta.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(SUBRATA TALUKDAR, J.)