

20.06.2022
(D/L-35)
Ct.-18
(Susanta)

C.O. 722 of 2019
With
I.A. No. CAN 1 of 2019 (Old CAN 12345 of 2019)

Sanchita Dutta (Sen)
-Vs-
Sri Surendra Nath Sen

Mr. Dipayan Kundu,
.... For the Petitioner.

None appears on behalf of the opposite party, as such, the revisional application is taken up for ex-parte hearing and disposal.

The husband, the opposite party herein, has filed a matrimonial suit being Matrimonial Suit No. 06 of 2012 pending before the 13th Court of learned Additional District Judge, Alipore District 24-parganas (south).

The wife, the petitioner herein, in the said suit filed an application under Section 36 of the Special Marriage Act, 1954 praying alimony pendente lite. The said application was registered as Misc. Case No. 22 of 2012.

The learned Trial Judge by the order dated January 30, 2018 has disposed of the said Misc. Case by awarding a sum of Rs.30,000/- (Thirty thousand rupees only) to the petitioner on account of litigation expenses but refused to grant any alimony pendente lite to the petitioner on the ground that she has received a sum of

Rs.15,00,00/- (Fifteen lakh rupees only) from the sale proceeds of her matrimonial home.

The wife has challenged the said order in the instant application under Article 227 of the Constitution of India.

The learned advocate for the petitioner, from the memo of consideration appended to Deed of conveyance whereby the matrimonial home of the petitioner was sold, points out that the vendor of the said deed i.e., the husband of the petitioner has received a sum of Rs. 15,00,000/- (Fifteen lakh rupees) in cash from the purchaser of the said property.

It is not the case of the husband that the said amount was received by the wife on account of her alimony from him, as such, even if she had received the said amount, the same has no effect on her right to get maintenance pendente lite from her husband. Moreover, on perusal of the records, it appears that the wife in her evidence recorded in the said Misc. case has specifically denied that she has received the said amount.

The finding of the learned Trial Judge that the petitioner has received a sum of Rs.15,00,00/- (Rupees fifteen lakh only) is based on no evidence, consequently, rejection of the prayer of the petitioner for alimony pendente lite is not sustainable, as such, except the direction

for payment of litigation expenses of Rs. 30,000/- (Thirty thousand rupees only) to the wife, the order impugned is set aside.

C.O. 722 of 2019 is disposed of by requesting the learned Trial Judge to decide the said Misc. Case afresh in accordance with law.

It is however made clear that the further proceeding of the matrimonial suit (Matrimonial Suit No. 06 of 2012) shall remain stayed till the disposal of the said Misc. Case and payment of alimony pendente lite that may be awarded in favour of the wife in the said Misc. case.

In view of the disposal of the revisional application, the connected application being I.A. No. CAN 1 of 2019 (Old CAN 12345 of 2019) is also disposed of accordingly.

There shall be no order as to costs.

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

(Biswajit Basu, J.)