

19.01. 2022
Ct. 21
D/L 29
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C.O. 994 of 2020
(Via Video Conference)

Smt. Piyali Mitra
-Vs-
Sri Prasanta Mitra

Ms. Priyanka Mondal,
...for the petitioner

Mr. Prantick Ghosh,
... for the respondent

The petitioner's wife being aggrieved by the order the interim order of pendente lite alimony at the rate of rupees Five thousand per month towards support of the minor child and litigation cost of rupees Five thousand awarded by the learned Additional District Judge, 3rd Court, Barrackpore in MAT Suit No. 2077/17 on 19.12.2019 has filed the present application under Article 227 of the Constitution of India.

Facts of the case in gist is that present opposite party Prasanta Mitra has filed a Matrimonial Suit No. 2077/17 for dissolution of his marriage with the present petitioner, which was solemnized according to Hindu rites and customs on 16.06.2011. While enjoying marital bliss they jointly purchased a flat in Durganagar after taking loan from the bank as the husband works

as a commercial manager in SENCO Gold and earn rupees Sixty thousand per month and wife works as a sales girl in Tanisq, Barasat and earns around rupees Twenty Five thousand.

A daughter was born to them in 20.07.2015. That their relationship started deteriorating after the birth of the child and ultimately the husband left the matrimonial home on 01.11.2017 and refused to maintain the family and pay the loan of the flat. All the responsibility fell on the wife who had to take care of the child's upbringing, her educational expenses as the child is studying in a English Medium school at Barasat and her medical expenses and also the responsibility of payment of installment of loan of the flat. Taking into consideration such facts as stated in the petition and written objection of the parties, the learned Court below passed the impugned order.

Now, by filling the present application the petitioner wife has alleged that the Court below passed the impugned order without adjudicating the necessity and requirement of the child. The Court below without any reason failed to award pendente lite alimony in favour of the wife and without recording the oral evidence of the parties and without directing the husband to produce his salary certificate.

It has been alleged by the wife that due to non-payment loan, bank has already served a notice under

SARFAESI Act. She has filed resignation sent to her employer by email on 21.01 2020 and alleged that at present she is unemployed and husband is bound to maintain her. Here, I find the wife has tendered her resignation to pursue other career aspirations after the passing of the impugned order.

Therefore, I find by filing by filing present revisional application the petitioner has not only challenged the legality of the order impugned, but also brought certain subsequent facts that have been developed after the passing of the order impugned.

Hon'ble Supreme Court in *Rajnish Vs. Neha* reported in 2021(2) SCC 324 has been pleased to frame guidelines on the issue for payment of maintenance, payment of interim maintenance, the criteria for determining the quantum of maintenance, the date from which the maintenance is to be awarded and enforcement of order of maintenance in different enactments.

The Supreme Court on the issue of payment of interim maintenance directed the following.

- a. The affidavits of Disclosure of Assets and Liabilities shall be filed by both the parties in all maintenance proceedings before the concerned Court as the case may be, throughout the country.

- b. If any further information is required, the concerned court may pass appropriate orders in respect thereof.
- c. The income of one party is often not within the knowledge of the other spouse. Hence, the Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.
- d. If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.
- e. The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the Court may consider initiation of proceeding u/S. 340 Cr.P.C., and for contempt of Court.
- f. In case the parties belong to the Economically Weaker Sections ("EWS"), or are living Below the

Poverty Line (“BPL”), or are casual labourers, the requirement of filing the Affidavit would be dispensed with.

- g. The concerned Family Court / District Court / Magistrate’s Court must make an endeavor to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

The Supreme Court on the issue of permanent alimony gave the following directions:

- a. Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse.
- b. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.

- c. Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.
- d. If there are any trust funds / investments created by any spouse / grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

The Supreme Court further directed in the judgment the criteria for determining the quantum of maintenance and provided the following factors to be considered by the court:

- 1. Status of the parties,
- 2. Reasonable needs of the wife and dependent children,
- 3. Whether the applicant is educated and professionally qualified,
- 4. Whether the applicant has any independent source of income,

5. Whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home,
6. Whether the applicant was employed prior to her marriage,
7. Whether she was working during the subsistence of the marriage,
8. Whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family,
9. Reasonable costs of litigation for a non-working wife,
10. The financial capacity of the husband,
11. His actual income,
12. The spiraling inflation rates and high costs of living,
13. Reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, his liabilities if any.

Further the Supreme Court held that maintenance in all cases will be awarded from the

date of filing the application for the maintenance before the concerned court. For enforcement/execution of the orders of maintenance, an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.

Section 24 and 25 of the Hindu Marriage Act, 1955 make provision for maintenance to a party who has no independent income sufficient for his/her support and necessary expenses. The prerequisite is that the applicant does not have independent income which is sufficient for her or her support, during the pendency of the lis.

After taking into consideration the averments made by the wife in her application and where she has invariably stated that she is the one who was making payment of the loan installment to save the flat. She is taking care of daily needs of the minor child including her educational expenses and medical expenses and finding wife having her own independent source of income the learned court

below has passed the impugned order granting pendent lite maintenance only in respect of the child without calling parties to adduce oral and documentary evidence to prove their actual income, status and whether the income of the wife is sufficient to maintain herself and child to the standard of life to which she is/was accustomed to and the income of the wife is sufficient to meet her reasonable meet.

Now, it has come on record the wife has already tendered resignation. That in view of direction of the Hon'ble Supreme Court in the above cited decisions the wife has to submit an amended supplementary affidavit before the trial court and who would consider the same at the time of final hearing. If the wife is no more in service then it would be difficult for her to maintain herself and a minor school going child with a paltry sum of rupees Five thousand as awarded towards interim maintenance of the child.

Having regards to events that have taken place subsequent to the passing of the impugned order, this court is of view that wife petitioner has to bring subsequent events to the knowledge of the lower Court who passed the impugned order and for modification of the order impugned. Therefore, order impugned is set aside with a direction to learned court below to consider

the application of the wife under section 24 of the Hindu Marriage Act, 1955 afresh. The petitioner wife is directed to file supplementary affidavit in respect of subsequent events and also calling salary certificate from the employer of the husband and also from the employer of the wife provided the wife is working in some other concern.

Accordingly, the revisional application being **C.O. 994 of 2020** is disposed of.

Connected application, if any, is disposed of.

Interim orders, if any, stands discharged.

There will be no order as to costs.

In view of the order made above affidavits are not invited. Allegations made shall be deemed to be denied.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Kesang Doma Bhutia, J.)

Accordingly **C.O. -- of -- is dismissed**. Connected applications are disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied. There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)