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C.O. 835 of 2022

Mrs. Sayantani Ghosh
Vs.
Mr. Sukesh Ranjan Koley.

Mr. R. N. Chakraborty,
... For the petitioner.

Mr. Sundor Gopal Bhattacharya,
... For the opposite party.

By the order impugned dated 5th March, 2022, learned Additional District & Sessions Judge, 6th Court, Alipore in Mat Suit No. 56 of 2017 has allowed the prayer for amendment on the prayer of the opposite party/husband simultaneous with rejection of a petition, filed by the petitioner/wife, dated 15th February, 2021, requiring opposite party/husband to file an affidavit doing disclosure of his income and expenditure from the date of marriage upto the date of the filing of the petition.

By the proposed amendment, some factual events happened preceding to the institution of the suit have been sought to be incorporated in connection with a suit for dissolution of marriage taking the ground of cruelty with others as available under Section 27 of the Special Marriage Act.

Mr. R. N. Chakraborty, learned advocate

appearing for the petitioner submits that the Court below has mechanically allowed the prayer for amendment without appreciating the true facts and circumstances involved in this case.

As regards the petition dated 15th February, 2021, being rejected by the learned Court below, learned advocate for the petitioner submits that the husband/opposite party is not fair enough to disclose his true income, since the date of his marriage upto the date of filing of the petition.

Thus, it is contended that for non-disclosure of the appropriate income of the husband, there has been improper quantification of the amount granted in the form of alimony pendente lite.

Without any controversy, the prayer for alimony pendente lite has already been disposed of. Against the decision returned by the learned Court below in connection with the prayer for alimony pendente lite, revisional jurisdiction of this Court has been invoked in C.O. 1220 of 2021, wherein there has been modification of alimony pendente lite to Rs. 70,000/- per month.

Per contra, Mr. Sundor Gopal Bhattacharya, learned advocate appearing for the opposite party/husband submits that the affidavit, sought to be filed by opposite party/husband is nothing but

purposefully intended to cause protraction of trial, even after disposal of petition for alimony pendente lite.

It is submitted by the learned advocate appearing for the opposite party/husband that even after disposal of the prayer for alimony pendente lite and subsequently modified by this Court in C.O. 1220 of 2021, there lies nothing to enforce the same, in the absence of any specific prayer revealing arrear of alimony pendente lite, still liable to be recovered by the petitioner/wife from the opposite party/husband. It is submitted also that there is nothing due as regards alimony pendente lite to be payable by the husband to wife/petitioner.

As regards the amendment being allowed, learned advocate for the husband submits that the order impugned cannot be interfered with, because there is sufficient remedy provided in the Code of Civil Procedure to challenge a particular fact, and as such the same may be effectively utilized at appropriate point of time.

Having considered the submission of both the sides, it appears that prayer for alimony pendente lite has already been disposed of, doing modification of quantum of alimony pendente lite to Rs. 70,000/- per month. Nothing is disclosed in the submission of learned advocate appearing for the petitioner that some

handful amount is due, as arrears, still liable to be recovered from the husband, and an application to that effect has already been filed by the petitioner/wife.

As regards the amendment being allowed in the manner, as contended, the Court perceives that petitioner is not remediless, because a particular fact, sought to be incorporated by proposed amendment, is always subject of challenge upon filing additional written statement.

The order impugned is, however, devoid of providing any opportunity to petitioner for furnishing additional written statement, if there be any.

With regard to the disclosure of the income of the husband in the form of an affidavit, the same may be agitated afresh, in the event of any application for modification of alimony pendente lite, being filed by the petitioner.

The order is thus modified giving opportunity to petitioner to file additional written statement responding to proposed amendment being allowed, vide order dated 5th March, 2022, within the date scheduled, and if any such additional written statement is filed at the instance of the petitioner/wife, the same may be considered for framing any additional issues, if at all needed, in accordance with the provisions of law.

Since the non-disclosure of the income by the

husband in the form of an affidavit is the bone of contention in this case, the petitioner may take recourse to the provisions of law, as available under Section 106 of the Evidence Act apart from making cross-examination of husband/opposite party on the issue of his income.

With this direction and observation, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings

(Subhasis Dasgupta, J)