

21.12.2022
Item No.4
Ct. No.7
CHC
(disposed of)

C.O. 2634 of 2022

Smt. Tanuja Banerjee (nee Chakroborty)
Vs.
Sri Manish Kumar Banerjee

Mr. Partha Pratim Roy,
Mr. Dibakar Bhattacharjee
...for the petitioner

Mr. Debasis Kar,
Mr. Husen Mustafi,
Mr. S. Kar
...for the opposite party

Subject-matter of challenge in this case is against the order dated 2nd August, 2022, granting *alimony pendente lite* to wife/petitioner at the rate of Rs,3,000/- per month.

Mr. Roy, learned advocate appearing for the petitioner disputes with the impugned order describing the same to have been inappropriately assessed ignoring the actual means of the opposite party/husband.

Adverting to affidavit of assets and liabilities furnished by the opposite party/husband, Mr. Roy submits that though the husband has described himself to be employed in Webapps Solutions Private Limited with a monthly income of Rs.12,500/- per month, but no document whatsoever has been furnished, which is purposefully made in order to

make some suppression of actual income, earned by the husband.

Mr. Roy further submits that the quantum of *alimony pendente lite* already assessed is meagre one and it is not sufficient for the wife to have a modest living, compared to the status of her husband, which she maintained during the continuance of her conjugal life with husband.

Mr. Roy, however, proposes for enhancement of quantum of *alimony pendente lite* and granting litigation cost also.

Per contra, Mr. Kar, learned advocate appearing for the opposite party, upon furnishing opposition to the claim of proposed enhancement, submits that the husband is most unfortunate one, and the document pertaining to the income of the husband, though could not be disclosed in the affidavit of assets and liability of the husband, but same was taken care of by the court below at the time of hearing of the petition for *alimony pendente lite*, after it was produced by the learned advocate representing the husband in the court below.

Supporting the order of the court below, learned advocate for the husband submits that the commitment and liability must be taken care of, while

visiting the impugned order with an aim for proposed enhancement.

It is thus submitted that no further enhancement is called for at the present moment.

Having considered the submission of both sides, it appears that the bone of contention between the parties is with regard to the assessment of quantum of *alimony pendente lite*, which the petitioner has alleged to have been improperly assessed, without addressing the actual means of income of the husband.

Upon perusal of the impugned order, it appears that the document pertaining to the income, if any, produced by the husband, could not be considered by the court below in the manner, as it ought to have been. The fundamental thrust of the petitioner is against the non production of the relevant documents of income of husband leading to the inappropriate assessment of quantum of *alimony pendente lite*.

In a situation like this, for the appropriate assessment of quantum of *alimony pendente lite*, an opportunity to husband may be given requiring the husband to produce the income document, certified by his employer, for six months preceding the date of the order.

Upon production of such income document, the prayer for *alimony pendente lite* may be decided afresh giving hearing for the purpose to both the sides.

The impugned order is thus set aside with a direction upon the court below to hear out the prayer for *alimony pendente lite* under Section 36 of the Hindu Marriage Act afresh within ten weeks from the date of communication of this order to the court below.

Until decision of *alimony pendente lite* afresh, as an interim arrangement, the opposite party/husband is directed to pay Rs.4,000/- (Rupees Four Thousand) per month with effect from the date of this order.

The income document of the husband, as mentioned hereinabove, may be furnished within three weeks from the date of communication of this order to the court below, upon supplying copy of the same well in advance to the petitioner.

Petitioner has every right to challenge the income document by producing some convincing material at the time of hearing of *alimony pendente lite* application afresh. The litigation cost is left to be decided by the court below at the time of final hearing of this *alimony pendente lite*.

It is however, clarified that while assessing the quantum of *alimony pendente lite* afresh, the commitment and liability of the husband if any, may also be taken care of so that the justice may be best ensured to both the parties.

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

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)