

S/L 10
15.11.2022
Court No.652
SD

CO 2220 of 2021

Smt. Nandita Manna
Vs.
Sri Dilip Kumar Manna

Mr. Pratip Kr. Chatterjee
Mr. Masud Mallik

... for the Petitioner.

Mr. Mukteswar Maity

... for the Opposite Party.

Being aggrieved and dissatisfied with the order no.95 dated 29.9.2021 passed by the learned Additional District Judge at Contai, Purba Medinipur in Matrimonial Suit No.315 of 2005, the present revisional application has been preferred.

The petitioner has contended that the marriage between the petitioner and the opposite party was solemnized on 23.11.1997 and they are blessed with a male child who was born on 19.10.1999.

The petitioner alleged that since first day of aforesaid marriage, she was subjected to torture both physically and mentally by the opposite party and on 10.8.2003, the opposite party/husband has driven out the petitioner from her matrimonial house. Thereafter, the petitioner made a complaint against the opposite party in the court of learned Sub-Divisional Judicial Magistrate at Contai under Section 498A/323/384 of the Indian Penal Code, being G.R. Case No.366 of 2003.

Under compelling circumstances, the petitioner herein filed a maintenance case under Section 125 of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate at Contai on 10.11.2003 being Misc. Case No.188 of 2003 and the defendant/husband filed written objection against that petition.

After contested hearing in that proceeding being Misc. Case No.188 of 2003, the learned Magistrate was pleased to grant Rs.1200/- per month to the petitioner herein and Rs.700/- per month for their minor, son born due to the said wedlock.

Thereafter, the husband/opposite party herein on 14.11.2005 filed an application under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage. In the said proceeding, the defendant/petitioner herein appeared on 06.4.2006 and filed an application under the Hindu Marriage Act for maintenance pendente lite and litigation costs being Matrimonial Suit No.315 of 2005. The learned court had taken up the said application under Section 24 of the Hindu Marriage Act and after taking evidence, the court was pleased to pass an order granting maintenance of Rs.1000/- per month pendente lite for the petitioner/wife and Rs.800/- per month towards maintenance pendente lite for the son and Rs.2000/- towards litigation cost.

It is alleged by the petitioner that thereafter the husband/opposite party did not carry out the said order of payment of pendente lite maintenance and litigation costs

and for which the petitioner/wife filed a petition on 11.9.2007 praying stay of all further proceedings of the suit for non-payment of the pendente lite maintenance amount and the litigation costs. On 11.9.2007 the learned court below allowed the petitioner's prayer and stayed all further proceedings of the suit for non-payment of the said amount. Subsequently, on 10.5.2018 the opposite party/husband filed a put up petition along with an application under Section 151 of the Code of Civil Procedure contending that the opposite party/husband has already paid Rs.5,32,635/- to the petitioner/wife for her maintenance and for her minor son in different Misc. Execution cases arising out of Misc. Case No.188 of 2003 for the period from 10.3.2004 to 14.02.2018 and that amount is required to be adjusted with the due amount of maintenance in this case as per award dated 21.5.2017 passed by the Court.

By way of another petition, the husband/opposite party also prayed for vacating the order of stay passed vide order dated 21.5.2007. The said application was taken up for hearing by the court below on 10.5.2018 and after contested hearing, the learned court below passed the impugned order with the observation that there is no due in connection with this case and accordingly, the learned court below vacated the order of stay passed earlier.

Mr. Pratip Kumar Chatterjee, learned counsel appearing on behalf of the petitioner, submits that the learned court below failed to consider the prayer of the

petitioner that are vague and instead of dismissing the same, he has committed material irregularity in passing the order impugned. The petition is barred by the provisions of estoppel and res judicata.

He further submits that the order of pendente lite maintenance as passed by the court below in the said matrimonial proceeding under the Hindu Marriage Act, was never challenged by the opposite party/husband and as such, he is bound to pay the said amount. The learned court below wrongly held from the receipts filed by the opposite party/husband that it appears that the petitioner/husband paid more amount to the respondent/wife and there is no due in connection with the case. In fact, the opposite party/husband has not paid any amount in connection with the pendente lite maintenance order passed by the court below under Section 24 of the Hindu Marriage Act.

Mr. Mukteswar Maity, learned counsel appearing on behalf of the opposite party/husband, submits that the petitioner herein/opposite party had not filed any objection against his petition for vacating the said order filed under Section 151 of the Code. Furthermore, he has made all the payments passed by the court and as such, there cannot be any stay.

He further submits that the petitioner/wife intentionally does not file written statement and she is intentionally dragging the suit. Accordingly, the opposite party/husband submits that the question of interference by

this Court in connection with the impugned order does not arise.

Considered the submissions made by both the parties.

It appears that from the order passed by the court below in granting pendente lite maintenance vide order dated 21.5.2007 of which relevant portion is as follows:-

“It has transpired in evidence that in the maintenance case under section 125 Cr.P.C. an award of Rs.1200/- per month for the maintenance of the respondent-wife and a sum of Rs.700/- per month for the maintenance of her minor son has already been passed by the learned A.C.J.M., Contai. So it is clear from the evidence on record that the respondent-wife is getting a sum of Rs.1900/- per month for her maintenance and for the maintenance of her minor son. Considering the present market condition, it cannot be said that the respondent-wife can maintain herself and her minor son with meager amount of Rs.1900/- per month. Viewed in this perspective and considering the factum that the petitioner-husband earns Rs.13348/- per month, I am of the opinion that the respondent-wife and her minor son are entitled to maintenance.”

From the spirit of the said order, it is clear that the pendente lite maintenance amount of Rs.1200/- for the wife/petitioner and Rs.700/- per month for the minor son of the petitioner was granted in addition of the maintenance amount granted earlier in Section 125 Cr.P.C. proceeding,

considering the market condition and that as the meager amount of Rs.1900/- as granted earlier in the 125 proceeding is not sufficient. It is the specific allegation of the petitioner that as the said amount of Rs.1000/- per month for the petitioner and Rs.800/- per month for her minor son and Rs.2000/- towards litigation costs has not been paid, so she had filed the said application for stay before the court below and initially the court was justified in passing the said stay order.

He further submits that from the impugned order, it appears that the payment of the amount of Rs.7,36,684/- was admittedly mentioned in connection with several Misc. Execution cases filed by the petitioner in connection with Section 125 proceeding and not in connection with the present Matrimonial Suit No.315 of 2005. The learned court below has calculated the alimony pendente lite maintenance amount of Rs.3,11,600/- from May 2007 to August 2021 comprising of 172 months for the said suit. It is further submitted by the petitioner that the said amount has not been paid by the opposite party/husband and accordingly, the court below was not justified in vacating the said order.

Per contra, the opposite party submits that husband/opposite party has paid all the arrear amount of maintenance.

In this connection, it is to be mentioned that a revisional application being C.O. 593 of 2021 was also preferred before this Court for expeditious hearing of the

aforesaid matrimonial suit and in that proceeding, this court specifically observed that it goes without saying that if the maintenance as directed by the court is not paid then the learned court below shall proceed in accordance with law and will not be bound by this order which relates to expeditious disposal of the case.

Having considered the aforesaid facts and circumstances of the case, the revisional application is disposed of with the observation that if the arrear amount of pendente lite maintenance amount as calculated by the trial court amounting to Rs.3,11,600/- has already been paid by the opposite party then the matrimonial proceeding being Matrimonial Suit No.315 of 2005 will proceed and in that event, if the petitioner/wife fails to file written statement within the time specified by the court below then the court below will be at liberty to proceed with the suit ex parte. But if the opposite party/husband fails to show payment of said amount of pendente lite maintenance and litigation costs before the court below, the court below will stay all further proceeding of the suit till the aforesaid payment is being made.

C.O. 2220 of 2021 is accordingly disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)