

S/L 21
07.9.2022
Court No.652
SD

CO 2335 of 2021

Sri Subhagata Chattopadhyay
Vs.
Smt. Basabdatta Chattopadhyay

Mr. Biswajit Konar
Mr. Arijit Mahinder

...for the Petitioner.

Affidavit of service filed in Court today be kept with the record.

In spite of service, opposite party is not represented in Court today.

The petitioner filed payment history of the maintenance amount to the wife/opposite party up to 10.8.2022, be kept with the record.

Being aggrieved and dissatisfied with the orders dated 26.02.2021 and 16.3.2021 passed by the learned Additional District and Session Judge, 2nd Court, Barrackpore, North 24-Parganas in Matrimonial Suit No.1304 of 2018, the present revisional application under Article 227 of the Constitution of India has been preferred.

The petitioner has contended that the petitioner filed the aforesaid matrimonial suit against the wife/opposite party for dissolution of marriage and the opposite party/wife contesting the said matrimonial suit by filing written statement.

It is further contended that the parties were blessed with a female child who was born on 09.5.1997 and presently

aged about 25 years. In the said proceeding for dissolution of marriage, the opposite party/wife filed an application under Section 36 of the Special Marriage Act praying for alimony pendente lite and litigation costs on the ground that she has no income of her own to maintain themselves.

Petitioner submits that presently he is posted as Medical Officer in the Acculi Labs Pvt. Ltd. and his salary as on November 30, 2021 is Rs.74,800/-. Before the court below, the opposite party/wife has taken a false plea that the petitioner earns Rs.1.5 lakh and accordingly, she prayed for Rs.70,000/- for herself and her daughter and Rs.1 lakh towards litigation cost.

Petitioner further contended that on 26.3.2021 when the said petition for alimony pendente lite was fixed for hearing, the learned court below without granting any opportunity to the petitioner to submit his case and without calling for submission for affidavit of assets by both the parties pursuant to the dictum and/or mandate laid down by the Hon'ble Apex Court in Criminal Appeal No.730 of 2020 (Rajnish vs. Neha) passed the impugned order.

By the impugned order, the learned court below was pleased to grant alimony pendente lite of Rs.40,000/- per month for the opposite party/wife as well as for her daughter and also awarded litigation cost of Rs.50,000/- as a lumpsum amount.

The petitioner submits that he has attained the age of 54 years and suffering from hypertension and various other

age old ailments and he has to incur Rs.3,000/- per month towards his medical treatment and he is staying alone at Bangalore, where he has to incur lot of expenses and on the contrary, the wife/opposite party is an M.A degree-holder and while the petitioner was at Singapore in the year 2007, she joined in Global Indian International School at Singapore as a teaching staff and used to get salary of Rs.80,000/- per month as per Indian currency. The petitioner therefore submits that opposite party/wife has sufficient capacity to maintain herself and also her daughter.

On perusal of the impugned order, it appears that while passing the said order, the court below has not asked for filing affidavit of assets in term of the Hon'ble Apex Court judgment in Criminal Appeal No.730 of 2020 (Rajnesh vs. Neha) in respect of which the following direction was passed.

“VI. Final Directions: *In view of the foregoing discussion as contained in Part B I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India : Rajnesh vs Neha on 4 November, 2020 Indian Kanoon - <http://indiankanoon.org/doc/117541087/> 39 (a) Issue of overlapping jurisdiction To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that: (i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set- off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding; (ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding; (iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding. (b) Payment of Interim Maintenance The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be*

filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country. (c) Criteria for determining the quantum of maintenance For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B III of the judgment. The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case. (d) Date from which maintenance is to be awarded We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B IV above. (e) Enforcement / Execution of orders of maintenance For enforcement / execution of orders of maintenance, it is directed that 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."

Having considered the aforesaid facts and circumstances of the case, the revisional application is hereby disposed of with a direction upon the learned Additional District and Sessions Judge, 2nd Court, Barrackpore, North 24-Parganas to ask both the parties for filing affidavit of assets and liabilities and on the basis of affidavit of assets and liabilities he is directed to consider the issue afresh in the light of aforesaid judgment and to pass fresh order in respect of the petition filed under Section 36 of the Special Marriage Act for alimony pendente lite and litigation cost filed by the opposite party/wife.

It is further directed that pending disposal of the aforesaid application under Section 36 of the Special Marriage Act before the learned Court below, without prejudice to the rights and contention of the petitioner/husband, he will continue to pay Rs.40,000/- per

month towards maintenance . The amount of litigation costs will be decided after hearing and at the time of passing fresh order. It is made clear that this court has not gone into the merits of the case and all issues are left open before the trial court to decide.

C.O. 2335 of 2021 is thus 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.)