

In the matter of : Smt. Soma Mitra nee Gharai
.....Petitioner

Mr. Krishna Das Poddar ...for the Petitioner

Inspite of service, none appeared on behalf of the opposite party.

No accommodation sought for on behalf of opposite party.

Being aggrieved and dissatisfied with the order dated 9.7.2018 passed by learned Chief Judicial Magistrate, 2nd Court, Barasat, North 24 Parganas in M-78 of 2017, in connection with the wife/petitioner's prayer for maintenance, the present revisional application has been preferred. By the impugned order, learned trial court granted interim maintenance of Rs. 4,000/- per month in favour of the petitioner and Rs. 3,000/- per month for her minor son, from the date of the order till disposal of the case.

It is submitted on behalf of the petitioner that the marriage between the petitioner and the opposite party took place according to the Hindu rights and customs in the year 2008 and it was duly registered under the Hindu Marriage Act. The parties were blessed with a son who is presently aged about 12 years. The petitioner was driven out by the opposite party from her matrimonial home on 4th December, 2016 as the petitioner could not fulfil their demand. Presently the said minor son studying in a school at Salt Lake namely Siksha Niketan. So long as the petitioner is staying at her parent's house, no maintenance

amount was given by the husband/opposite party, knowing fully well that the petitioner is unable to maintain herself and their minor son. The husband is a businessman dealing with the Real estate and has developed many multistoried buildings in Rajarhat-Gopalpur, having substantial income of Rs. 1.5 lakh to Rs. 2 lakh per month and he is an income tax assessee. The petitioner has prayed for maintenance of Rs. 20 thousand for herself and Rs. 20 thousand for her son.

Learned advocate for the petitioner Mr. Poddar further contended that despite earning a lucrative sum by the husband (which is evident from the documents filed as annexure) from his real estate business and from other sources, learned court below opined that the wife could not prove her husband's income and as such Rs.7,000/- was awarded out of which Rs. 4 ,000/- was awarded to the petitioner/wife and Rs. 3 ,000/- for the minor son.

Mr. Poddar, further submits that the order of interim maintenance is not only scanty but also it is not awarded from the date of the filing of petition and as such the order impugned dated 9.7.2018 has been passed without considering the income of the husband which prima facie appears from the various real estate transactions made by the husband. The income tax return in the year 2017-18 shows that the gross annual income of the opposite party/husband is Rs. 3,84,504/-. He further submits that though from the income tax return in the year 2016-17, it appears that the petitioner's gross annual income was Rs. 2,78,651/- but it does not reflect the true state of affair because when the parties were residing together, various trade licences were obtained in the

name of petitioner/wife and that is why income tax return was filed by her husband in the name of wife/petitioner.

Considering the facts and circumstances of the case and that statement of income of opposite party remains unchallenged including the income tax return as submitted by the petitioner the impugned order dated 9.7.2018 is modified to the extent that the opposite party/husband will pay interim maintenance of Rs. 10,000/- for the petitioner and Rs. 10,000/- for the minor son from the date of filing the maintenance application till the disposal of the case, in default, the petitioner will be at liberty to put the order for execution before the concerned Magistrate. The opposite party shall pay monthly maintenance as above within 7th of each succeeding month and the arrear amount of maintenance shall be paid by opposite party in twelve monthly installments by 31st July, 2023. The learned Magistrate is directed to dispose of the application under Section 125 of the Code of Criminal Procedure being M-78 of 2017 as expeditiously as possible preferably within a period of six months from the date of this order.

CRR 3095 of 2018 is accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)