

(12)
12.04.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 3885 of 2019

Sri Joydeb Jana

-versus-

Smt. Rebati Jana

Ms. Manideepa (Paul) Roy,

... for the petitioner.

Mr. Indranath Mukherjee,

Mr. Sukanta Mondal,

... for the opposite party.

The petitioner is the husband of the opposite party. The petitioner has filed a suit being Matrimonial Suit No. 827 of 2015 seeking dissolution of the marriage between the parties by a decree of divorce, *inter alia*, on the ground of cruelty. The said suit is pending before the learned Additional District Judge, Fast Track Court-II, Howrah.

The opposite party in the said suit filed an application under Section 24 of the Hindu Marriage Act, 1955 for *alimony pendente lite* registered as Miscellaneous Case No. 15 of 2016.

The wife in her said application prayed for *alimony pendente lite* @ Rs. 20,000/- per month and a further sum of Rs. 20,000/- on account of litigation expenses alleging that the husband earns Rs. 50,000/- per month from business and agriculture and also has an income of Rs. 10,000/- per month as interest from his savings.

The husband in his written objection to the said application denied the aforesaid allegation of the wife and has claimed that he earns Rs. 150/- per day as daily labourer as and when such work is available to him.

The parties adduced oral and documentary evidences in support of their respective cases.

The husband did not prove his claimed income although obliged to do so under the law.

The learned Trial Judge by the order impugned being order no. 32 dated July 08, 2019 has disposed of the said misc. case by directing the petitioner to pay *alimony pendente lite* to the respondent @ Rs. 15,000/- per month from the date of filing of the said misc. case and also directed him to pay a sum of Rs. 10,000/- on account of litigation expenses.

The provision of Section 24 of the Hindu Marriage Act, 1955 mandates that the Court on the application of the wife or the husband, as the case may be, order the respondent to pay the petitioner the expenses of the proceeding and having regard to the petitioner's own income and the income of the respondent, pay such monthly sum, which the Court seems to be reasonable.

Therefore, the phrase '*having regard to*' appearing in the body of the said provision of the said Act, obliges the Court to come to a finding with regard to the income of the parties to the

application before fixing the quantum of the alimony pendente lite. (See ***Ashit Mukherjee vs. Smt. Susmita Mukherjee (Nee Roy)*** reported in **AIR 1987 Cal 153**)

In arriving to a finding regarding such income of the parties, some guesswork is permissible, particularly when one party is trying to inflate the income of the other party and the other party is trying to suppress his actual income but the quantum of *alimony pendente lite* cannot be fixed without having regard to the income of the parties.

In the present case, the quantum of alimony since has been fixed without the aforesaid exercise being carried out, the order impugned suffers from material irregularity as such, is not sustainable and is accordingly set aside.

The learned Trial Judge is requested to decide the said misc. case afresh in accordance with law in the light of the observations made hereinabove.

In view of the time limit fixed under the proviso appended to Section 24 of the said Act of 1955, the learned Trial Judge is further requested to make all endeavour to dispose of the said application within sixty days from the date of communication of the said order and in doing so, shall not entertain the prayer of the parties for any unnecessary adjournment.

The learned advocate for the wife submits that his client is in immediate need of some financial support, considering the said submission, the husband is directed to pay a lump sum amount of Rs. 30,000/- to the bank account of the wife directly within two weeks from date, the particulars of the said bank account is required to be furnished by the learned advocate for the wife to the learned advocate for the husband in course of this week.

The aforesaid payment is without prejudice to the rights and contentions of the husband in the said application under Section 24 of the said Act of 1955 and the said amount shall be adjusted against the amount of maintenance *pendente lite* that may be awarded in favour of the wife in the said misc. case.

C.O. 3885 of 2019 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)