

(06)
04.01.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(Via Video Conference)

CO No. 3881 of 2018

Smt. Mamata Seal
-versus-
Mrityunjoy Seal

Mr. Arijit Bardhan,
Mr. Rishab Dutta Gupta,
... for the petitioner/wife.

Mr. Sukanta Chakraborty,
... for the opposite party/husband.

The instant revisional application under Article 227 of the Constitution of India is at the instance of the wife/respondent of the Matrimonial Suit No. 60 of 2004 pending before the learned Additional Principal Judge Family Court, Calcutta and is directed against the Order No. 129 dated September 13, 2018 passed in the said suit.

The learned Trial Judge by the order impugned has dismissed an application filed by the petitioner praying enhancement of the amount of alimony pendente lite.

The initial order of alimony pendente lite was at the rate of Rs. 1000/- per month but in revision being C.O. 171 of 2011 the said amount was enhanced to Rs. 4000/- per month with the observation that the said amount would be payable till the disposal of the suit.

The learned Trial Judge, in view of the said observation, has dismissed the said application of the petitioner for enhancement of the said amount of alimony pendente lite.

Mr. Arijit Bardhan, learned advocate appearing on behalf of the petitioner submits that the said observation of the High Court is of no consequence in deciding the application for enhancement of alimony pendente lite because the amount of alimony pendente lite is always variable on the changed circumstances.

Mr. Sukanta Chakraborty, learned advocate appearing on behalf of the opposite party submits that the suit is at the stage of disposal, at this stage, the said application has been filed to delay the said disposal.

Heard learned advocate for the parties, perused the materials-on- record.

It appears that the order of alimony pendente lite attained finality with the disposal of the aforementioned revisional application on September 26, 2012. The petitioner, long time thereafter on June 26, 2018 filed the said application for enhancement of the amount of alimony pendente lite, inter alia, on the ground of price escalation of essential commodities.

The order of alimony pendente lite is always subject to variation on the changed circumstances, therefore, the observation made in the order passed in revision arising out of earlier order of alimony pendente lite that the amount fixed in such order would be payable till the disposal of the suit cannot change the variable character of the said order.

The learned Trial Judge, therefore, is not justified in dismissing the said application for enhancement of alimony pendente lite solely on the ground of the said observation.

The order impugned is, therefore, not sustainable and is accordingly set aside. Considering the age of the opposite party which has a bearing in his earning capacity, the amount of alimony pendente lite is enhanced to Rs. 6,500/- per month with effect from the month of December, 2021.

To liquidate the arrear alimony pendente lite at the enhanced rate, the husband/opposite party is required to pay a lump sum amount of Rs. 40,000/- by two equal monthly installments along with the current alimony, first of such installment shall be payable before the end of the month of February, 2022 and the second installment shall be payable on the following month.

The husband/opposite party shall go on paying the alimony pendente lite at the enhanced rate within seventh of each succeeding month for which it falls due directly to the bank account of the wife, particulars whereof is required to be furnished by the learned advocate for the wife/petitioner to the learned advocate for the husband/opposite party.

In the event, the wife/petitioner unreasonably fails or neglects to cooperate with the learned Trial Judge in disposing the suit, this order shall automatically be vacated without any reference to this Court and in the event of any default in making any of the aforesaid payments, further proceeding of the suit shall be stayed.

Subject to regular payment of alimony pendente lite and liquidation of the arrear alimony, the learned Trial Judge is requested to dispose of the suit as expeditiously as possible in accordance with law, preferably, within a period of three

effective available working months of the said Court from the date of communication of this order.

It is made clear that the learned Trial Judge must ensure the payment of all arrear alimony pendente lite before disposal of the suit.

C.O. 3881 of 2018 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.)