

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

03.03.2022
Item No.13
Court No. 01
Saswata
(AR)(C)

C.O. 5 of 2022

**Nikhil Majumdar
Versus
Dulali Majumdar (Dhar)**

Mr. Arnab Saha
...for the petitioner

The instant revisional application is directed against order no. 23 dated 25.02.2020 passed by the learned Additional District Judge, 3rd Court at Cooch Behar in Misc. (J) Case No. 35 of 2019 by which an application under Section 24 of the Hindu Marriage Act, 1955 was disposed of directing the petitioner to pay the alimony *pendenti lite* to the tune of Rs.5,000/- per month. The petitioner filed the suit under Section 9 of the said Act seeking restitution of conjugal rights. In the said proceeding an application for maintenance was taken out claiming that the petitioner owns 16 Bighas of the agricultural land and earns Rs.50,000/- per month. The said application was taken up by inviting the parties to lead evidence in support thereof. The wife stood firm in her evidence that the husband earns Rs. 50,000/- per month. But the petitioner has taken a plea that he is a daily labourer and does not have any landed property.

The Court did not believe the statement of the wife but proceeded to grant a maintenance to the tune of Rs.5,000/-. The Court finds that the daily labourer, as projected by the husband is not believable. It is no doubt true that the income of a person is his special knowledge and by virtue of Section 106 of the Evidence Act, it is the duty of the husband to disclose the income by convincing materials.

The quantum of maintenance varies from a case to case. There cannot be any straightjacket formula for ascertaining or determining the quantum of maintenance. The maintenance must be in commensurate with the status, reputation, financial stability and the standing of the husband in the society. The concealment of income by the husband which is his special knowledge may raise adverse presumption against him.

The Trial Court found that once the marriage is proved, it is an obligation of the husband to maintain the wife. However, the learned advocate for the petitioner sought to contend that in course of the hearing, the wife asserted that she does not wish to live with the husband and, therefore, the Court ought to have considered the same while considering an application for maintenance.

The law is settled in this regard. There is no fetter put in Section 24 of the said Act nor the

language employed therein suggests that the maintenance can be denied on refusal of the wife to go to her matrimonial house. The version of the wife in the said application, as would be evident from the impugned order that she was thrown out of the house and which has been denied by the petitioner, is essentially a question of fact to be decided at the time of trial of the suit and not at the stage of the maintenance under Section 24 of the said Act. In absence of any cogent evidence forthcoming from both the sides pertaining to the income, there is no fetter on the part of the Court to apply robust common sense on the basis of the evidence and the demeanor of the witnesses.

The Court has found that there is no difficulty on the part of the petitioner to pay a sum of Rs.5,000/- per month as maintenance to the wife which does not appear to be unreasonable.

This Court, therefore, does not find any infirmity and/ or illegality in the impugned order.

The revisional application being C.O. 5 of 2022 is dismissed.

(Harish Tandon, J.)