

Item No. 14
12.12.2023
Court. No. 19
GB

C.O. 51 of 2023
With
CAN 2 of 2023

Sri Vivek Agarwal
Vs.
Ekta Kumari Agarwal (Bagaria)

*Mr. Pratip Mukherjee,
Mr. Arpit Agarwal,
Mr. Yashashwi Sundariya*

...for the Petitioner.

*Mr. Manjit Singh,
Ms. Tiya Mukherjee,
Mr. Biswajit Mal*

...for the Opposite Party.

The revisional application has been filed challenging an order dated November 30, 2022, passed by the learned Additional Principal Judge, Family Court at Calcutta in Matrimonial Suit No.145 of 2019. By the order impugned, the learned court disposed of an application under Section 36 of the Special Marriage Act on contest. Maintenance pendente lite at the rate of Rs.30,000/- per month was made payable to the wife along with a one time litigation cost of Rs.50,000/-. Direction was that the maintenance pendente lite shall be paid month by month within 10th of each succeeding month to the bank account of the wife or by cheque from the date of the application. In case of default, the wife would be entitled to execute the order.

The grounds on which the learned court came to such a quantum, are as follows:-

- a) From the bio data which was given to the wife's family at the time of proposal for marriage indicated that the petitioner owned three shops under the name and style of M.S. Creation, Maya Creation and the third shop at Park street, which was let out.
- B) The petitioner was owner of several flats and also owned an Ertiga car.
- C) The petitioner was wealthy and was living in opulence.
- D) That the petitioner had also developed an amorous relationship with another woman.
- E) That the price of essential commodities had sky rocketed.

Mr. Mukherjee, learned advocate appearing on behalf of the petitioner submits that the entire finding of the learned court is based on the bio data which was neither a part of the evidence nor proved before the Court. The affidavit of assets filed by the husband declares the husband's income as Rs.25,000/- per month as per the income tax return, which is a public document. The bio data could not be relied upon. It is further submitted that the flats were owned by the parents and subsequently sold. Mr. Mukherjee further contends that the factum that the petitioner had developed an amorous relationship with another woman, should not be a ground for granting an abnormally high amount as maintenance pendente lite.

This Court, on the earlier occasion, had directed Mr. Singh to file a supplementary affidavit to name the source who had handed over the bio data. In the supplementary affidavit, the name of the person who had negotiated the marriage, her phone number and address have been mentioned.

Thus, this Court is, prima facie, satisfied that the bio data was not created by the opposite party/wife. However, whether such bio data was actually tendered as evidence, is not available with the records. In Clause-J of the affidavit of assets regarding income of the spouse, the opposite party has categorically stated that the husband's income is Rs.1,50,000/- from the two shop rooms. One at 58, Hari Ram Goenka Street, in the name of M.B. Creation and another in the name of M.S. Creation. Several landed property and flats in Prerna Apartments and Siddha Pynes, have also been mentioned.

Thus, it cannot be ruled out that the affidavit of assets filed by the wife mentioned the factum of landed property, shops and the flats. As it is the contention of the husband that none of these assets are in the name of the husband, it is to be proved in evidence. In any event, the issue as to whether the bio data was prepared to woo the opposite party into marriage with an impression that the petitioner was wealthy, is a matter which has to be decided on evidence.

Under such circumstances, this Court is of the view that the order impugned deserves to be set aside only on the ground that oral and documentary evidence should be led by

the parties on the question of quantum of maintenance, because of the following reasons:-

- 1) The Marriage was negotiated on the basis of an alleged bio data which indicates that the petitioner was owner of flats, cars, shops etc., but the petitioner denies such fact.
- 2) The wife has alleged that the petitioner travels abroad on occasions, for pleasure, which indicates that the petitioner is wealthy and has a higher income than what has been admitted.
- 3) The petitioner has alleged that the wife imparts private tuition and has income of her own.

The order impugned is set aside. The matter is remanded to the learned trial court for further hearing of the application for maintenance pendente lite, upon allowing the parties to adduce evidence on the points stated hereinabove. Both parties shall be entitled to adduce oral and documentary evidence. The petitioner will continue to pay a sum of Rs.20,000/- per month within 10th of each succeeding month to the wife, till disposal of the application. This amount is provisionally fixed by this Court, taking into account the standard of living which the opposite party was enjoying when she was at her husband's place and the standard of living the husband enjoys. The rent that may be payable by her, her living expenses, medical expenses, etc., are also taken into account. It is well-settled that the wife should be able to maintain a standard of living which she was

enjoying in her matrimonial home and which her husband still enjoys.

With regard to the arrears, the petitioner will pay a sum of Rs.3,00,000/- on an ad hoc basis in four equal monthly instalments, along with the current maintenance. First of such instalment shall be paid within January 10, 2024 along with current maintenance and thereby month by month every month, till the entire amount is liquidated. Fraction, if any, shall be added in the last instalment.

The application under Section 36 shall be decided afresh and disposed of within a period of two months from date.

Accordingly, the revisional application is disposed of.

With the disposal of the revisional application, CAN 2 of 2023 is disposed of.

This order shall continue till the final disposal of the application under Section 36 of the Special Marriage Act.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)