

30.06.2023
Court No. 19
Item no.12
CP/GB

C.O. 52 of 2023

Sandip Kumar Dutta

Vs.

Smt. Baishakhi Dutta (nee Biswas)

Ms. Shebatee Datta

Ms. Poulami Roy

....for the petitioner.

Mr. Subhranil Ray

Ms. Kakali Samajpati

....for the opposite party.

The revisional application has been filed challenging an order dated November 9, 2022, passed by the learned Additional District Judge, 10th Court, Alipore in Misc. Case No. 446 of 2018, arising out of Matrimonial Suit No. 170 of 2017.

By the order impugned, the learned court below directed that the husband/petitioner to pay maintenance pendente lite of Rs.15000/- per month to the wife and Rs.15000/- per month to the child, month by month every month within 7th day of each month.

The arrears were directed to be paid in six equal monthly instalments starting from December, 2022. One time litigation cost of Rs.50,000/- was further directed to be paid.

In addition, the husband was also directed to pay the medical expenses for the therapy of the child, upon production of original receipts.

The husband has challenged the order, on the ground that the learned court below did not take into consideration the following factors:

- a) That the husband was bearing all expenses with regard to the son's education.
- b) The wife was living in a common mess and did not have any personal expenditure towards food, and shelter.
- c) The husband has a LIC policy in the name of the son and a medical claim in the name of the family.
- d) That the husband was always willing to continue to pay the premiums, in respect of the said policies.

The learned advocate for the wife submits that the child requires continuous medical help and therapy. That even though the wife and son live in a common mess, there are other expenses which she has to bear. That the wife does not have any other suitable accommodation. That, despite orders having been passed by the learned trial court and by this court, the monthly maintenance had not been paid regularly.

Upon perusing the order impugned and the documents filed before the learned court below as also the cross-examination of the wife, this court comes to the following conclusions:

- a) The wife had admitted that she lives in a joint mess and with her parents-in-law.
- b) The wife had admitted that she resides in the ground floor of her matrimonial home.
- c) In view of the two above factors, the wife does not have to incur any expenses towards food, rent, electricity and other incidentals for basic daily sustenance.
- d) There is an admission that when the child was admitted in the hospital for treatment, the husband had borne all the expenditure.
- e) The wife was not sure of the husband's monthly income.

Having considered the above factors, this Court is of the view that monthly expenses of Rs.15,000/- for the son is reasonable and no interference is called for. One time litigation cost of Rs.50,000/- is also reasonable. However, considering the fact that the wife and the child live in the matrimonial home and eat in the joint mess with the parents-in-law, award of Rs.15,000/- to the wife is slightly excessive in comparison to the income of the husband. The husband is a business man. His income fluctuates.

Such fact is also available from the income tax returns, filed by the husband, which are part of the record.

Thus, having heard the learned advocates for the respective parties, this Court comes to the following conclusions:-

- a) One time litigation cost of Rs.50,000/- shall be paid within July 15, 2023.
- b) The award of Rs.15,000/- per month in favour of the child shall remain unaltered.
- c) With regard to the wife, the petitioner shall pay a sum of Rs.10,000/- per month.
- d) The admission fee of the son to each class and session fee of the child shall be paid by the petitioner as and when claimed by the school. The regular monthly school fees and the fees for co-curricular activities will be paid from the monthly maintenance. The cost of books, copies, uniform etc. shall be borne by the father/petitioner.
- e) The petitioner will continue to support the wife and the son, insofar as, the medical expenses are concerned from the medical claim.
- f) Cost of therapy of the child be borne from the maintenance.

g) The wife and the child will continue to eat in the joint mess as was the arrangement so far, and shall be allowed to reside in the premises without any disturbance.

In case of failure of the husband to comply with the above conditions, the wife is at liberty to approach the learned court below for further directions owing to changed circumstances.

The total sum of Rs.25,000/- as directed above towards the wife and child shall be paid month by month every month, within 7th of each month. First of such payment shall be made in July 2022. Arrears at the rate of Rs.25,000/- per month from December 2022 shall be paid in eight equal monthly instalment. First of such instalment shall accompany the maintenance as directed by this Court from the month of July 2022.

In case of failure of the husband to comply with any of the provisions, the suit shall remain stayed and the wife will also be entitled to claim for enhanced maintenance, if the husband does not pay the amount as directed hereinabove, apart from taking other steps for execution of the order of maintenance.

The order impugned is modified to the above extent.

Accordingly, the revisional application is disposed of.

However, there shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)