

CO 392 of 2023
Sri Sanatan Gharai
vs.
Smt. Mamoni Gharai

Mr. Debdutta Raha

... for the petitioner

Mr. Akash Dutta

Ms. Venessa Hogs

... for the respondent

The revisional application arises out of an order dated January 9, 2023 passed by the Learned Additional District Judge, 5th Court, at Alipore, District South 24 Parganas, in Misc. Case no.16 of 2017.

By the order impugned, the learned court rejected the claim for alimony in respect of the wife, on contest. The learned court allowed maintenance pendent lite in favour of the daughter to the tune of Rs.5000/- per month, along with onetime litigation cost of Rs.3000/-. The petitioner was directed to pay the amount of alimony pendent lite of Rs.5000/- per month to the daughter from the date of filing of the Misc. Case. All arrears of maintenance was directed to be cleared within 24 months from the date of the order. The current maintenance was directed to be paid within the 7th day of every succeeding month. In

case of failure to make payment of arrear maintenance within 24 months from the date of the order or in case of failure to pay the monthly maintenance, the wife was granted liberty to execute the order, in addition to her right to take other steps in accordance with law. The awarded maintenance was subject to the adjustments/deductions of any other amount of maintenance, if awarded by any other forum.

Learned court below discussed the cardinal principles on the basis of which the quantum of maintenance pendente lite was to be awarded to the wife, namely, (a) status of the parties, (b) the standard of living to which the wife was used to, (c) the income of the husband, (d) the expenses of the parties, (e) the probable expenses to maintain a child and (f) the ability of the wife to prosecute her case.

The learned Court found that the husband was working for gain at Jadavpur University Campus, Institute of Business and Management and was earning more than Rs.50,000/- per month. The learned Court also found that the husband had other source of income.

Accordingly, the learned court held that although the wife was earning Rs.10,000/- per month, justice would be subserved if Rs.5,000/- per month was granted for the child as alimony pendente

lite. As the child was living with the mother, she was entitled to maintenance pendent lite of Rs.5,000/-.

Learned Advocate for the petitioner assails the order impugned on the ground that the daughter is an adult and married. The learned court overlooked the fact that the daughter was also an adult at the relevant point of time and the father was not liable to pay maintenance pendente lite for the daughter in terms of the provisions of Section 24 of the Hindu Marriage Act, 1955. Only a minor child, who was living with the mother, was entitled to maintenance under the provisions of the said Act, on the application filed by the mother.

The remedy of an adult daughter, to claim maintenance from the father was under the Hindu Adoptions and Maintenance Act, 1956. A female child had the right to claim maintenance even after she attained majority, until she gets married in terms of the said Act.

Learned counsel for the opposite party denies the assertion that the daughter is married. It is submitted that Section 24 and Section 26 of the Hindu Marriage Act, 1955, read together, empowered the learned court to provide maintenance pendente lite to a child, even if, the child does not file the application, but the mother files the same.

Heard learned counsel for the respective parties. There is no dispute with the proposition of law that, even if, the child does not file a separate application claiming maintenance under the provisions of the said Act, the mother can file an application under Section 24 of the said Act and the court can allow maintenance for the minor child on the mother's application. The contention of the opposite party with regard to the daughter being an adult was not dealt with by the learned Court.

Section 20 of the Hindu Adoptions and Maintenance Act, 1956, stipulates that the Hindu parent is liable to maintain his male and female children. So far as the male child is concerned, the right to claim maintenance would cease when he attains majority, but as far as a female child is concerned, the right would continue even after she attains majority, until she gets married, provided she is unable to maintain herself out of her own earning or other property.

Admittedly, the learned court below did not take into account the age of the daughter, while allowing the maintenance pendente lite. The court took into account the expenses which the wife was found to be incurring towards the education of the daughter. The court deemed it fit to allow an additional amount of Rs.5000/- per month towards

the expenses incurred for the purpose. The court was of the view, that the wife's income was not sufficient to meet such expenses. The expenses of a party is a relevant consideration while awarding maintenance. Thus, the order is modified to the extent that the additional Rs.5000/- per month is being awarded to the opposite party/wife as maintenance pendente lite from the date of filing the Misc. Case, month by month, to meet her expenses. The amount of Rs.10,000/-, which the wife earns, is not sufficient to cover the wife's expenses, taking into consideration the educational expenses, she bears for the daughter. Thus, such amount is being awarded. The petitioner has not been able to show that the daughter is married. It is a stray allegation.

The petitioner earns Rs.50,000/- and also has other income. Such are the findings of the court. Payment of Rs.5000/- per month to the wife for all her expenses, is reasonable and proper. The money which the mother spends on the education of her daughter should be included in her expenses. The petitioner does not pay for the daughter.

All arrears from date of filing of the Misc. Case till December, 2023, shall be cleared in twelve equal monthly instalments from this date and the current maintenance will be paid at the rate of Rs.5000/- per month from the month of January 2024, within 10th

February 2024 and month by month, within 10th of every succeeding month. Failure to comply, will result in execution of the order.

The order impugned is set aside.

There will be no order as to costs.

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

(Shampa Sarkar, J.)