

22.09.2023
Sl. No.4(DL)
srm

C.O. No. 1055 of 2020
With
CAN 1 of 2023
Chanchal Purkayastha
Versus
Sharmistha Purkayastha

Mr. Saptangsu Basu,
Ms. Mrinalini Majumdar

...for the Petitioner.

Mr. Debasish Ghosh,
Mr. Nilanjan Adhikari,
Mr. Subhajit Roy

...for the Opposite Party.

The revisional application arises out of an order dated November 13, 2019 passed by the learned Additional District Judge, 6th Court at Alipore, in Misc. Case No.26 of 2018. Misc. Case No.26 of 2018 is an application under Section 36 of the Special Marriage Act, 1954 filed in Matrimonial Suit No.56 of 2016.

By the order impugned, the learned court below disposed of the application under Section 36 of the Special Marriage Act and directed that a sum of Rs.40,000/- per month be paid to the wife/opposite party and the two minor children as alimony *pendente lite*. Such amount was directed to be paid from the date of filing of the application, i.e., September 25,

2018. The litigation cost of RS.10,000/- was also directed to be paid.

Mr. Basu, learned Senior Advocate appearing on behalf of the husband/petitioner challenges the order on the following grounds:

- (a) Admittedly, parties did not adduce evidence. The learned court below arrived at the quantification of the amount, based on surmise and conjecture.
- (b) The husband's income was never proved. The court did not arrive at any finding with regard to the income of the husband.
- (c) A sum of Rs.35,000/- was being paid since long. Such amount was not adjusted with the arrears.

Mr. Ghosh, learned Advocate appearing on behalf of the wife/opposite party submits that it was for the husband to prove his income. Repeated orders were passed by the learned court below, calling upon the husband to produce his salary slip and disclose his income. The husband did not comply with such direction. Mr. Ghosh further submits that another application for enhancement of the alimony *pendente lite* is also pending. This Court had passed an order of expeditious disposal of the proceedings.

Having considered the rival contentions of learned Counsel for the parties, this Court is of the view that when the order impugned was passed sometime in 2019, the husband had disclosed his income to be approximately 83,000/- per month. It is expected that there has been increments in between. Orders of the court, asking the husband to disclose his income are referred to. The records do not reveal that the present income has been disclosed by the husband.

It is an admitted position that the wife and minor children are residing together and children are school going. They are engaged in regular activities. Apart from the usual educational expenses, expenses with regard to medical requirements, food, clothing, shelter, entertainment etc. should also be taken into account while computing the amount of maintenance to be paid to the wife. Most importantly, the wife and the children have a right to enjoy the same status and standard of living as the husband/petitioner. The petitioner works in a multinational company. Thus, his estranged wife and children have a right to maintain the minimum standard of living which the petitioner enjoys.

Under such circumstances, this Court does not find any reason to interfere with the quantum of maintenance awarded

by the learned court below, i.e. Rs.40,000/- from the date of filing of the application for alimony *pendente lite*.

The order impugned records that in the written notes of arguments filed by the wife, she admitted that sum of Rs.35,000/- every month was being paid by the husband/petitioner. Thus, the order impugned is modified to the extent that the amount already paid on and from the date of filing of the application for maintenance, i.e., September 25, 2018 shall be adjusted against the amount payable as arrears. It is informed that a sum of Rs.2,20,000/- has already been paid to the wife as per the direction of the learned executing court. The current maintenance of Rs.40,000/- shall continue on and from September, 2023. The same shall be paid within 7th day of the succeeding month. In case of default, the suit shall not proceed.

The application for enhancement of maintenance should be disposed of by the learned trial Judge. Such application shall be disposed of on its own merits. However, in the said proceeding, parties are directed to file their calculations to enable the learned court below to dispose of the said application effectively by quantifying the arrears, if any, as requested to be paid on the basis of this order. This requirement is essential, as neither of the parties is able to

substantiate the amount paid to the wife on and from September 25, 2018, till date. In such proceeding, the learned court below will also determine if there are any arrear dues while deciding whether further enhancement should be allowed to the petitioner, over and above Rs.40,000/- due to changed circumstances, upon considering the present income of the husband and expenditure for the children etc. If any arrears are due till date, the same shall be paid by the husband.

The revisional application is, thus, disposed of.

In view of disposal of the revisional application, the connected application has become infructuous and the same is disposed of accordingly.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)