

Item No. 11
05.10.2023
Court. No. 19
GB

C.O. 1052 of 2023

Smt. Mahuya Roy Chaudhury
Vs.
Sri Rajat Roychowdhuri

*Mr. Tapas Kr. Ghosh,
Mr. Tanmoy Chowdhury*

...for the Petitioner.

*Mr. Jayanta Sengupta,
Mr. Indrnil Karfa,
Ms. Poulami Roy*

...for the Opposite Party.

The revisional application arises out of an order dated March 20, 2023 passed by the learned Additional District Judge, Asansol, Paschim Bardhaman in Misc. Case No.78 of 2021 arising out of Matrimonial Suit No.447 of 2021.

According to Mr. Ghosh, learned advocate appearing on behalf of the petitioner, the order impugned suffers from various irregularities.

- a) The learned court below awarded Rs.8,000/- as maintenance pendente lite without considering the income of the husband.
- b) The learned court below did not discuss any reason as to why the quantum of maintenance was found to be reasonable.
- c) The husband could not prove that the wife had any other source of income.
- d) The learned court below wrongly relied on the submission of the husband with regard to his income, although there were documents in the custody of the wife which would indicate that the

husband was a practising advocate and had a considerable income.

- e) The maintenance pendente lite was directed to be paid from the date of the order subject to adjustment of the interim maintenance that was being paid.

Mr. Sengupta, learned advocate appearing on behalf of the opposite party submits that the learned court had recorded that considering all aspects, status of the parties, income and expenditure of the husband as per the affidavit of assets and liabilities and the affidavit of the petitioner, Rs.8,000/- as maintenance pendente lite was just and proper. The amount of Rs.5,000/- was directed to be adjusted against such quantum, as per law.

It appears to this Court that the learned trial judge had passed the order impugned upon consideration of the records, but detailed reasons have not been given. However, there is nothing on record which would prove otherwise. Mr. Ghosh relied on certain documents which are not part of the learned trial court's proceeding.

The proper course of action of the petitioner was to file those documents before the learned court below and lead evidence thereon, at the time of consideration of the application. Those documents are not part of the records.

However, the order is modified to the extent that the amount of Rs.8,000/- with the adjustment provided should be paid from the date of filing of the application under Section 24 of the Hindu Marriage Act, that is, December 7,

2021. The Court has also not made any provisions for payment of arrears. The order is modified to the following extent:-

- A) Rs.8,000/- per month within 10th of every English calendar month upon adjustment with the amount which is being paid in terms of the proceeding under the Domestic Violence Act, shall be paid as directed by the learned court below.
- B) Such payment will commence on and from the month of October 2023.
- C) The arrear maintenance from the date of the order till September 2023 at the rate of Rs.8,000/- with the adjustment shall be paid in six equal monthly instalments. First of such instalment shall be paid with the maintenance for October 2023.
- D) Litigation cost of Rs.10,000/- shall be paid as directed by the learned court below within October 10, 2023, if not paid.

As the matter has attained finality and the documents are not part of the records, the same cannot be looked into. However, if there are changed circumstances from the date of passing of this order, the petitioner may approach the learned court below for enhancement, which shall be decided in accordance with law. As the suit is at the stage of evidence, the Court directs that the same shall be expedited and disposed of within the next six months provided the order of this Court or any further orders are complied with in its letter and spirit.

Accordingly, the revisional application is disposed of.

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

(Shampa Sarkar, J.)