

06.06.2023
Court No. 19
Item No.48
CP

C.O. 1390 of 2023

Sandip Chowdhury
Vs.
Sampa Chowdhury

Mr. Probal Mukherjee, Sr. Advocate
Mr. Suhrid Sur

....for the petitioner.

Mr. Kushal Chatterjee
Mr. Debabrata Ray

...for the opposite party.

The revisional application is directed against an order passed by the learned Additional District Judge, 3rd Court, Howrah dated March 22, 2023. By the order impugned the learned court below directed alimony pendente lite @ Rs.35,000/- per month to be paid to the opposite party/wife, within the 7th day of each succeeding month. The petitioner was further directed to pay all arrears by September, 2023. Litigation cost of Rs.25,000/- was also awarded.

Mr. Mukherjee, learned senior advocate appearing for the petitioner, has challenged the order on the following grounds:

- a) The learned court below took into account the income of the company and not the petitioner's individual income, while arriving at the conclusion that the petitioner was earning more than Rs.1,00,000/- per month.

- b) That the learned court below completely ignored the face book profile and the advertisement published by the wife in the social media, which would indicate that not only was the wife was a singer and a vocalist, but also imparted tuition to children from classes VI upto the graduation level.
- c) The fact that the petitioner had landed property and other property, would not ipso facto indicate that the petitioner had a huge income.
- d) The court erred in not accepting the print outs of the face book profile of the wife on account of non-compliance of the procedure to be followed for tendering electronic evidence.

Mr. Chatterjee, learned advocate appearing on behalf of the wife, draws the attention of the court to the income tax returns of the petitioner for the assessment year 2017-2018 which has been annexed to the revisional application. It appears that the gross income of the petitioner was more than Rs.12 lakhs. It is further submitted that the total expenditure of the petitioner would be approximately Rs.15,000/- as he did not have any other liability. Finally, it is submitted that even if the wife had some income by

imparting tuition or otherwise, the said income should not be taken as a static one and definitely was not a secured source of income.

Having perused the impugned order, the court finds that the learned Trial Judge had considered all the aspects and had drawn an adverse inference due to failure of the petitioner to file the profit and loss accounts and balance sheets of the company of which he is a director. The learned trial court also found that the money deposited in the bank account of the petitioner had suddenly shrunk from Rs.50,00,000/- to Rs.2,00,000/-. The learned Trial Judge thus arrived at the conclusion that the petitioner had suppressed his actual income and had wrongly mentioned Rs.40,000/- as his monthly income in the affidavit of assets. A sum of Rs.35,000/- per month had been awarded as maintenance pendete lite from the date of filing of the application.

It is settled law that the individual income of the husband should be taken into consideration while deciding the quantum of alimony to be paid to the wife. Similarly, the alimony should commensurate with the standard of the husband and the wife must be able to reside in the same status as she was residing when she was living in her matrimonial home. The wife should also be provided

with sufficient funds to afford a rental accommodation, as residing with the parents may not be well-accepted and dignified for the wife.

The Supreme Court in ***Chaturbhuj v. Sita Bai***, reported in **(2008) 2 SCC 316**, held that the object of maintenance proceedings was not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to support such persons who cannot provide for themselves, and had a moral claim to such support.

In the matter of ***Kalyan Dey Chowdhury vs Rita Dey Chowdhury Nee Nandy*** decided in ***Civil Appeal No. 5369 of 2017***, the Hon'ble Apex Court following the decision in ***Dr. Kulbhushan Kumar vs. Raj Kumari and Anr.*** reported in **(1970) 3 SCC 129**, held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance was always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance based on various factors.

In ***Soma Chowdhury (Sarkar) v. Pradip Kumar Chowdhury*** reported in **2009 (1) CHN 282** it was observed:-

“It is now settled law that the amount of alimony pendente lite should vary between one-third and one-fifth of the income of the earning spouse depending upon the facts and circumstances of the case.”

In the decision of **Ranjesh vs Neha & Anr**, decided in **Criminal Appeal No. 730 of 2020**, the Hon’ble Apex Court noted with approval the decision of the Delhi High Court in **Bharat Hedge v Smt. Saroj Hegde** reported in **140(2007) DLT 16** which laid down the following factors to be considered for determining maintenance :

- “1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant’s liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.
11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act. 17.”

Going by the income tax return of the petitioner, it appears that the monthly income of the husband is around Rs.1 lakh and the formula usually followed, is that the alimony should be

around $1/3^{\text{rd}}$ to $1/5^{\text{th}}$ of the income of the husband. This court is of the opinion that Rs.30,000/- should be a legitimate amount to be paid to the wife who also does not have any dependants.

Upon consideration of the above factors and the principles laid down in the foregoing decisions, this court is of the view that the amount of Rs.35,000/- as awarded be modified to Rs.30,000/- per month. The arrears shall be paid from the date of the application as directed by the court by way of six monthly instalments. The maintenance per month shall be paid month by month within the 7th day of every succeeding month. First of such instalments shall be paid with the maintenance payable for the month of June, 2023 within 15th June, 2023. Thereafter, each instalment and the maintenance shall be paid month by month within 7th day of every succeeding month as directed by the learned court below.

The litigation cost, if not paid, shall be paid within June 15, 2023.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)