

October 5, 2023
Sl. No.12
Court No.19
s.biswas

CO 1451 of 2023

Smt. Sanchita Dey

vs.

The State of West Bengal and another

Mr. Sourav Bose

... for the petitioner

Mr. Asim Kumar Chakraborti

Mr. S. Barman

... for the opposite party no.2

The petitioner who is the wife in Matrimonial Suit No.1414 of 2018, filed an application under Section 36 of the Special Marriage Act for alimony pendente lite. The application was registered as Misc. Case No.244 of 2019. The said suit is pending before the learned Additional District Judge, 10th Court at Alipore.

By the order impugned, Misc. Case No.244 of 2019 was disposed of by directing the husband to pay litigation cost of Rs.30,000/-, but no alimony pendente lite was directed to be paid.

The wife is aggrieved by such order and has approached this court by filing this revisional application. The contentions of the petitioner/wife are as follows:

- a) The learned court below was persuaded not to pass any orders on the ground that the wife had received Rs.9,00,000/- (Rupees Nine Lakhs) from her father-in-law. Such amount was given by the father in law for

treatment of the petitioner's parents and not towards her maintenance.

- b) The principles governing award of maintenance pendente lite was not followed by the learned court below. On the other hand, the learned court decided the issue as if the wife was claiming equitable relief. The court held that the petitioner did not come with clean hands as she had not mentioned about Rs.9 lakhs, which her father-in-law had paid to her, during the subsistence of marriage.
- c) The court was not required to observe that it was better if the petitioner earned her own livelihood instead of depending on the husband.

The learned advocate for the opposite party no.2/husband opposes such submissions and produces the affidavit of assets filed by the respective parties. It is contended that the wife has her own income and she is a well-known singer.

From the order impugned, I find that the learned court below failed to exercise his jurisdiction as required by law, while disposing of the application for maintenance pendente lite. The extraneous consideration as to whether the wife should gainfully

employ herself and not depend on someone else, was uncalled for.

The fact that the father-in-law had given some money to the wife during the subsistence of marriage to the petitioner were not a relevant consideration. The court was required to decide whether maintenance pendente lite should be granted in favour of the petitioner upon taking into consideration the income of the husband, income of the petitioner, the expenses of both the parties and when and how the amount of Rs.9 lakhs was given to the petitioner and utilized by the petitioner.

In my view, the matter should be remanded to the learned court below for proper adjudication.

The order impugned is set aside except the part with regard to payment of litigation cost. The learned court below is directed to decide the issues afresh with regard to the prayer for maintenance pendente lite, upon allowing the parties to lead evidence in Misc. Case No.244 of 2019. The litigation cost, if not paid, shall be paid to the wife within three weeks from date.

The parties shall be allowed to adduce oral and documentary evidence in respect of the Misc. Case No.244 of 2019. The misc. case shall be adjudicated afresh. The Matrimonial Suit No.1414 of 2018 shall

not be disposed of till the Misc. Case No.244 of 2019 is disposed of.

The revisional application is thus disposed of.

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

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)