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21.8.2023
Ct. 236
SB

C.O. 1453 of 2003

In the Matter of : Monidip Biswas

with

CPAN 631 of 2004

In the Matter of : Papiya Biswas

Mr. Probal Kumar Mukherjee, Sr. Adv.
Ms. Bhagyashree Kanjilal

... for the petitioner

This revisional application challenges the Order No. 12 dated 03.06.2002 and Order No. 18, dated 20.02.2003 and Order No. 23, dated 13.5.2003 passed by the learned Additional District Judge, 5th Court, Barasat, North 24 Parganas in connection with Mat. Suit No. 163 of 2001.

Briefly stated in a matrimonial dispute registered as Mat. Suit No. 163 of 2001, learned Additional District Judge, 5th Court, Barasat, North 24 Parganas was pleased to dispose of the application under Section 36 of the Special Marriage Act 1954 directing the petitioner / husband Mr. Monidip Biswas to pay a sum of Rs.2,800/- per month towards alimony *pendente lite* and Rs.3,000/- towards litigation cost. Taking into consideration the income of the husband at the relevant point of time as Rs.15,000/- per month and there was no other persons dependent on the petitioner, I do not find any reason to interfere with the order impugned.

By Order No. 18 dated 20.02.2003 the learned Trial Court was pleased to reject the petition filed by the petitioner / husband under Section 151 of the Code of Civil Procedure seeking order to recall the Order No. 12 by which the quantum of alimony was fixed and the petitioner was directed to pay the amount. It was contended by the petitioner that in a proceeding under Section 125 of the Code of Civil Procedure a sum of Rs. 1,000/- was awarded to the wife. The petitioner due to his illness could not attend the hearing of the petition under Section 36 of the Special Marriage Act rejecting the prayer for adjournment, the Court decided the application in absence of the petitioner. Learned Trial Court assigning the reason was pleased to reject the application. There is nothing to demonstrate that the learned Trial Court acceded his jurisdictional error in deciding the application, therefore, the order impugned does not merit any interference.

Order No. 23 – By filing application under Section 151 of the Code of Civil Procedure the petitioner / husband prayed before the learned Trial Court to modify the order dated 03.9.2002. By the Order No. 23, learned Trial Court decided the application without committing any jurisdictional error. There is nothing to indicate the aforesaid order is perverse, hence does not warrant any interference. Consequently the revisional application does not merit any further consideration and is disposed of.

In Re : CPAN 631 of 2004

None is appearing on behalf of the petitioner / wife.

The contempt application was filed for non compliance of the order passed by the co-ordinate Bench of this Court dated

10.9.2003. None is appearing on behalf of the petitioner / wife. By the impugned order the opposite party / husband was directed to pay a sum of Rs.2,500/- per month towards the maintenance of the petitioner / wife, which was not completed with. There is a specific provision under the law to put the order of maintenance into execution and realise the arrear maintenance, I do not consider it an act of contempt on the part of the alleged contemnor.

The application is devoid of merits and is accordingly dismissed, however, without any order as to costs.

The revisional application being C.O. 1453 of 2003 along with application being CAN 1 of 2003 (Old No. 10043 of 2003) and contempt application being CPAN 631 of 2004 are disposed of.

Let a copy of the order be sent to the learned Trial Court for information.

(Siddhartha Roy Chowdhury, J.)