

S/L 9-10
16.3.2023
Court No.652
SD

CO 1952 of 2016

Smt. Ankita @ Ria Sarkar (Mondal)
Vs.
Sri Arup Kumar Sarkar

With
CO 1650 of 2016

Sri Arup Kumar Sarkar @ Arup Sarkar
Vs.
Smt. Ankita @ Ria Sarkar (Mondal)

Mr. Arabinda Chatterjee
Ms. Kakali Dutta
Ms. Anamika Biswas

...for the Petitioner.

Mr. Gautam Banerjee
Mr. Majnu Sk.

...for the Opposite Party.

Being aggrieved and dissatisfied with the order no.37 dated 11.3.2016 passed by the learned Additional District Judge, 3rd Court, Balurghat, Dakshin Dinajpur in Misc. Judicial Case No.5 of 2015 under Section 24 of the Hindu Marriage Act,1955 arising out of Matrimonial Suit No.216 of 2014, present application being CO 1952 of 2016 and CO 1650 of 2016 preferred against self-same order. CO 1952 of 2016 has been preferred by the wife whereas CO 1650 of 2016 by the husband.

The background of the case is husband filed a suit for restitution of conjugal rights against wife under Section 9 of the Hindu Marriage Act against the present wife/petitioner before the learned District Judge, Dakshin Dinajpur which was registered as aforesaid Matrimonial Suit No.216 of 2014.

In the said suit, the wife/opposite party filed an application under Section 24 of the said Act of 1955 which is registered as Misc. Judicial Case No.5 of 2015. Subsequently, both Matrimonial Suit No.216 of 2014 and Misc. Judicial Case No.5 of 2015 pending before the learned District Judge, Dakshin Dinajpur were transferred to the court of learned Additional District Judge, 3rd Court, Balurghat for disposal.

The marriage between the parties was solemnized according to Hindu customs and rites on 20.01.2014. The wife/opposite party alleged that during her stay at her matrimonial house, she was subjected to torture and she was compelled to abort pregnancy and ultimately, father of the petitioner was compelled to take her back to her paternal home on 08.5.2014. Subsequently, she came back to resume matrimonial tie but she was ultimately driven out from matrimonial home on 01.7.2014 and since then she is residing at her father's house at Balurghat. The husband/opposite party denied all such allegations.

In the aforesaid proceeding being Misc. Judicial Case No.5 of 2015, the wife/petitioner had prayed for maintenance to the tune of Rs.10,000/- per month and Rs.50,000/- towards litigation cost.

Learned court below while disposing the said application was pleased to grant maintenance pendente lite to the tune of Rs.9,000/- per month and Rs.35,000/- in lumpsum towards litigation cost to the petitioner to be paid by the opposite party from the date of passing of the order.

Being aggrieved by that order, the revisional application being No.1650 of 2016 has been preferred by the husband for setting aside the order. According to the petitioner/husband, the said amount is unjustified and bad in law.

On the other hand, CO 1952 of 2016 has been preferred by the wife/petitioner being aggrieved by the selfsame order seeking direction for grant of pendente lite maintenance from the date of filing of the application instead of from the date of order. In terms of the order passed by this court, both the parties have filed their affidavit of assets and liabilities.

From the affidavit of assets and liabilities filed by the husband/applicant, it appears that the monthly gross pay of the husband/applicant is Rs.53,285/- and his net income is Rs.38,085/- per month. The husband/applicant towards his liability has mentioned that his mother is a cancer patient and she was treated at Bombay Tata Cancer Hospital and more than five lakhs had already been expended and now due to shortage of money she has been taking chemo in Calcutta Hospital and husband is paying entire costs of treatment.

The wife/applicant has also filed her statement of assets and liabilities wherein she has mentioned that her monthly expenditure is about Rs.20,000/- and she is not getting any amount of maintenance from her husband except a lumpsum amount of Rs.50,000/- as per order of the Hon'ble High Court dated June 28, 2016 and Rs.35,000/- towards litigation costs as ordered by court below.

I have considered the rival submissions and also perused the statements of affidavit of assets and liabilities filed by both the parties.

Since the gross income of the husband is Rs.53,285/- per month and applying workable formula, i.e., 1/5th of the gross income of the husband/petitioner, which the wife is entitled to get towards maintenance, I find that the court below has not committed any wrong in allowing Rs.9,000/- towards pendente lite maintenance. Petitioner/wife admitted that the litigation cost awarded by the court below has already been paid by the husband/petitioner to the wife/opposite party.

As regards wife/petitioner's prayer made in CO 1952 of 2016, it is now well-settled in terms of judgment passed by Apex Court in **Rajnesh vs. Neha reported in (2021) 2 SCC 324** case that the pendente lite maintenance which has been granted by the court below is to be awarded not from the date of the order but from the date of filing of the application.

In view of the above, the order no.37 dated 11.3.2016 passed by the learned Additional District Judge, 3rd Court, Balurghat, Dakshin Dinajpur in Misc. Judicial Case No.5 of 2015 is hereby modified only to the extent that the monthly pendente lite maintenance amount to the tune of Rs.9,000/- per month, is to be paid from the date of filing of the application under Section 24 of the Hindu Marriage Act, i.e. from March 9, 2015 and not from the date of the order as ordered by the court below, in the order impugned.

The court below is directed to adjust the amount which has already been paid to the wife by the husband with the arrear amount that will be calculated by the court below.

The husband shall pay the arrear amount of maintenance by three monthly instalments of which first instalment shall be by April 30, 2023, the second instalment by May 31, 2023 and the third instalment by June 30, 2023. The current pendente lite maintenance amount shall be paid by husband/opposite party by 10th of each succeeding month as ordered by the court below.

Accordingly, CO 1952 of 2016 is allowed and CO 1650 of 2016 is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)