

July 3, 2023
Sl. No.5
Court No.19
s.biswas

CO 1646 of 2023

Bapi Kumar Modak
vs.
Juthika alias Juthika Modak (Mondal)

Ms. Saini Das
Mr. Soham Banerjee

... for the petitioner

Mr. Ankit Agarwala
Mr. Subir Debnath
Mr. Rana Ray

... for the opposite party

Affidavit of service filed by the petitioner is taken on record.

The revisional application has been filed challenging the order dated August 1, 2022 passed by the learned Additional District Judge, Ranaghat, Nadia in Misc. Case No.06 of 2022 arising out of Matrimonial Suit No.138 of 2021.

The petitioner/husband is aggrieved by the order impugned on the following grounds:

- a) maintenance at the rate of Rs.5000/- was given with effect from the date of separation, thereafter at the rate of Rs.10,000/- per month from February, 2021;
- b) the order of maintenance could not have been issued from the date of separation, as the law was otherwise;
- c) maintenance should have been awarded from the date of application for maintenance i.e., from April 4, 2022;

- d) the quantum of income of the husband was not adjudicated by the learned court below and award of Rs.10,000/- was arbitrary. The quantum of maintenance was not based on any parameters usually considered at the time of award of maintenance.
- e) The fact that the husband is a labourer and did not have substantial income. The amount of maintenance directed to be paid, was exorbitant.

Mr. Agarwal submits that the amount of Rs.10,000/- was just and proper as the petitioner had failed to establish his own income. He had two shops and a monthly income of Rs.60,000/-.

In the application for maintenance, the wife has categorically stated that the husband is the owner of two shops at Ranaghat Sona Patty. He dealt in silver and had an income of Rs.60,000/-. Contention is that huge landed property was also owned by the petitioner. Hence, litigation cost of Rs.30,000/- and alimony pendente lite of Rs.20,000/-, had been claimed.

The husband filed a written objection and categorically denied the contention of the wife. According to the husband, his family income was around Rs.9000/- per month.

None of the parties adduced any evidence, either documentary or oral in respect of each other's claim.

Considered the submissions and the pleadings. The order impugned, suffers from the following material irregularities:-

- a) the learned trial court did not consider the income of the husband;
- b) the award of maintenance from the date of separation was contrary to law. It should have been awarded from the date of the application filed by the wife;
- c) the standard of living of the husband was not taken into consideration;
- d) no reasons have been assigned as to why maintenance of Rs.10,000/- per month was awarded from February 2021;
- e) the expenses of the wife was not considered;
- f) the order impugned is totally unreasoned and not based on any material.

Under such circumstances, the order impugned is set aside. Undoubtedly, the petitioner/husband is liable to maintain the wife. Hence, one time litigation cost of Rs.20,000/- shall be paid along with a total sum of Rs.30,000/-, within July 15, 2023 for interim sustenance of the wife, till the application for maintenance is decided de novo, upon allowing the

parties to adduce evidence (both oral and documentary). The application shall be disposed of within two months from receipt of communication of this order. The quantum of maintenance pendente lite shall be decided. The award of litigation cost has attained finality. The amount of Rs.30,000/- will be adjusted, later with the quantum to be awarded.

It is made clear that in case of default in making the payment, as directed the court, the learned court below shall not proceed with the matrimonial suit.

The revisional application is thus disposed of.

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

(Shampa Sarkar, J.)