

IN THE HIGH COURT AT CALCUTTA

(Civil Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

RVW 158 of 2023

IA No. CAN 1 of 2023

Mrs. Sayantani Ghosh

Versus

Mr. Sukesh Ranjan Koley

With

CO 1716 of 2023

Sayantani Ghosh

Versus

Sukesh Ranjan Koley

Mr. Rajdeep Bhattacharya

.....For the Petitioner

Ms. Kabita Mukherjee

Mr. Manas Dasgupta

Mr. Meghajit Mukherjee

.....For the Respondent.

Hearing Concluded On : 03.08.2023

Judgment on : 10.08.2023

Krishna Rao, J.: -

1. The petitioner has filed the present application for review of the order passed by this Court dated 29th May, 2023 in CO No. 1716 of 2023.
2. The petitioner has filed the Civil Revisional Application being C.O. No. 1716 of 2023 challenging the order passed by the Learned District Judge in Matrimonial Suit No. 56 of 2017 dated 8th May, 2023 wherein the Learned District Judge has dismissed the application of the petitioner for enhancement of maintenance pendent lite.
3. By an order dated 29th May, 2023, this Court had dismissed the revisional application on the ground that this Court did not find any reason to interfere with the impugned order.
4. Mr. Rajdeep Bhattacharya, Learned Advocate representing the petitioner submits that this Court while dismissing the civil revisional application has not considered the affidavit of assets filed by both the parties before the Learned Court of District Judge along with the application filed for enhancement of the alimony pendente lite.
5. Mr. Bhattacharya submitted that in the affidavit of assets, the respondent has declared his monthly income as Rs. 3,74,950/- per month which this Court has not considered while dismissing the revisional application.

6. Mr. Bhattacharya submitted that in the affidavit of assets filed by the petitioner, her monthly income is only Rs. 15,500/- per month, though the monthly expenditure is Rs. 80,700/- per month.
7. Mr. Bhattacharya submitted that this Court has not considered that the status of the petitioner is not at par with that of the respondent.
8. Mr. Bhattacharya submitted that this Court had dismissed the civil revisional application of the petitioner without considering that the alimony amount granted to the petitioner is not sufficient for the petitioner to lead the same standard of living as that of her husband.
9. Mr. Bhattacharya relied upon the judgment reported in **(1997) 7 SCC 7 Jasbir Kaur Sehgal vs. District Judge, Dehradun & Ors.)** and submitted that the Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged to under the law and statutory but involuntary payments or deductions.
10. Mr. Bhattacharya relied upon the judgment reported in **2007 SCC Online Del 622 (Bharat Hegde vs. Saroj Hegde)** and submitted that for self employed person or persons employed in an unorganised sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country and determining interim maintenance, there cannot be mathematical exactitude. The Court has to take a general view.

11. Mr. Chakraborty further relied upon the judgment reported in **(2013) 8 SCC 320 (Kamlesh Verma vs. Mayawati and Ors.)** and submitted that if there is a mistake or an error apparent on the face of the record, review application is maintainable.
12. *Per contra*, Ms. Kabita Mukherjee, Learned Advocate representing the opposite party submitted that the review application filed by the petitioner is not maintainable under law as there is no error apparent on the face of record.
13. Ms. Mukherjee submitted that the Learned District Judge while deciding the application filed by the petitioner for enhancement has considered the affidavit of assets of both the parties, earlier judgment passed by this Court and the submissions made by both the parties and had dismissed the application filed by the petitioner.
14. Ms. Mukherjee submitted that this Court while passing the order dated 29th May, 2023, categorically held that this Court did not find any reason to interfere with the order passed by the learned District Judge and also observed that the dismissal will not preclude the petitioner from taking appropriate steps for enhancement of the maintenance if occasion arise.
15. Ms. Mukherjee submitted that there is no ground to review the order dated 29th May, 2023. She further submitted that the review cannot be treated as an appeal.

16. Ms. Mukherjee relied upon the judgment reported in **2017 (2) CLJ (CAL) 257 (Soumya Majumder vs. Shrestha Dhar Majumder)** and submitted that the application filed by the petitioner for enhancement of Alimony Pendent lite is not maintainable and alimony pendent lite cannot be enhanced.
17. Ms. Mukherjee further relied upon the judgment reported in **(2000) 6 SCC 224 (Lily Thomas and Others vs. Union of India & Ors.)** and submitted that the power of review can be exercised for correction of a mistake but not to substitute a view. She submitted that such powers can be exercised within the limits of the statute dealing with the exercise of power.
18. Heard the learned Counsel for the parties, perused the application for review, the order under review and the judgment relied by the parties.
19. Ms. Mukherjee has argued that the application filed by the petitioner for enhancement of alimony pendent lite is not maintainable and had relied upon the judgment of **Soumya Majumder (Supra)**.
20. An identical point was raised before the coordinate Bench and the judgment rendered in **Soumya Majumder (Supra)** was also placed for consideration. The coordinate bench noticed that the two coordinate bench decisions rendered at an earlier point of time by this court was unnoticed in **Soumya Majumder (Supra)** and also the judgment of the Apex Court rendered in case of **Shipra Bhattacharya vs. Dr. Aparesh Bhattacharya reported in (2009) 4 SCC 366** and held that the

judgment rendered in **Soumya Majumder (Supra)** is not a good law and applied the principles of per incurriam in these words:

“So far as the decision of the Supreme Court in the case of Mrs. Rena Drego (Supra) cited by the opposite party I find that in the said case, the High Court in exercise of revisional jurisdiction under Article 227 of the Constitution of India reversed the decree of eviction passed by the Small Causes Court, Bombay, based on finding facts which was not vitiated by any perversity of patent illegality. In the facts of this case already discussed above, I find that the said decision has no application. With regard to the decision of a learned Single Judge of this Court in the case of Soumya Majumdere (Supra) it is a fact that in the said case, a learned Single Judge of this Court has held that once an application for alimony pendente lite under Section 24 has been disposed of by the court any subsequent application for enhancement of the alimony pendente lite is not maintainable. However, with utmost humility, I find that the said decision was passed without considering the Supreme Court decision in the of Shipra Bhattacharya v. Dr. Aparesh Bhattacharya, reported in (2009) 4 SCC 366, and the decision of a learned single Judge of this court in the case of Bipasha Bhowal (supra). In the case of Shipra Bhattacharya (Supra), in an application under Section 24 of the Act of 1955, the learned trial judge awarded Rs. 4,000/-, per month as alimony pendente lite to be paid by the respondent husband to the petitioner wife. The said order was challenged by the petitioner wife by filing a revisional application before this Court. During pendency of the said revisional application the petitioner wife filed an application before the learned trial Judge seeking enhancement of alimony pendente lite which was originally awarded in her favour. A learned Single Judge of this Court, however, disposed of the said revisional application by directing the learned trial Judge to dispose of the said application filed by the petitioner for enhancement of the original amount of alimony pendente lite within a specific period of time. The said order passed by the learned Single Judge of this Court was challenged by the wife by filing a special leave petition before the Hon'ble Supreme Court. The Supreme Court held that the petitioner wife was entitled to enhancement of the alimony pendente lite and enhanced the monthly alimony pendente lite in favour of the petitioner wife from Rs. 4,000/-, per month to Rs. 7,000/-, per month from the date of filing of the application under Section 24 of the Act of 1955. Even in the case Bipasha Bhattacharya (supra), Jyotirmay Bhattacharya, J. upheld the right the applicant wife to file an application for enhancement of the alimony pendente lite originally

allowed by the learned trial Judge under Section 24 of the Act of 1955. For all these reasons, I find that the decision of the learned Single Judge of this Court in the case of Soumya Majumdar (supra) is per incurrium and does not lay down the correct law.”

- 21.** Once a judgment is declared per incurrium, it loses its binding efficacy and, therefore, any reliance thereupon is unwarranted. This Court agrees and accepts the reasoning given by the Coordinate Bench that the power of the Court has not taken away in explicit term to entertain an application for enhancement of alimony pendente lite even after the disposal of an application under Section 24 of the Hindu Marriage Act, 1955 or Section 36 of the Special Marriage Act.
- 22.** The petitioner has filed an application before the learned Court of 6th Additional District Judge at Alipore for enhancement of alimony pendent lite from Rs. 70,000/- to Rs. 2,30,000/-. The ground for enhancement is explained in paragraphs 9, 11, 12 and 13 of the application which reads as follows :

“9. That the defendant/wife has gathered some information that the plaintiff/husband has joined ‘Anthem’ as a Dev Ops Lead/Scrum Master since January, 2019 and his yearly income is nearly 132 thousand dollars and his monthly income is 11 thousand dollars. That the monthly income of the plaintiff/husband if calculated in Indian Currency is (11 thousand dollars X Rs. 76 = Rs. 8 Lacs 36 Thousand, since 1 dollar = Rs.76 in Indian Currency).

11. The Defendant/Wife is unemployed and having no income of her own to maintain herself.

12. The Defendant/Wife state that it is obligatory on the part of Plaintiff/Husband to pay

alimony at a rate commensurate with his own status, to facilitate the Defendant/Wife to maintain and lead her life in such equivalent status of Plaintiff/Husband.

13. The Defendant/Wife is thereof unable to maintain herself in commensurate with the status of Plaintiff/Husband.”

- 23.** The petitioner relied upon the affidavit of assets of the opposite party wherein the opposite party has disclosed his monthly income as Rs. 3,74,950/- and as per the affidavit of assets of the petitioner, the monthly income of the petitioner is Rs. 15,500/-.
- 24.** By an order dated 5th March, 2019, this Court in CO No. 2518 of 2018 had granted Rs. 70,000/- per month as alimony pendente lite to the petitioner from the date of filing of the application. The petitioner has filed the present application for enhancement of the alimony pendente lite on the ground that the income of the opposite party is now Rs. 3,74,950/- and at the time of passing of the order by this Court dated 5th March, 2019, the income of the opposite party was Rs. 2,75,000/- and this Court held that the petitioner is entitled to get enhanced alimony pendente lite from Rs. 25,000/- to Rs. 70,000/- per month.
- 25.** The petitioner has prayed for enhancement of alimony pendente lite on the ground that the status of the petitioner should be at par with the respondent. The petitioner has neither mentioned in the application for enhancement nor in the revisional application filed before this Court with regard to any change of circumstances for which the alimony pendente lite is required to be enhanced.

- 26.** The only ground which the petitioner has taken in her application is that the income of the opposite party has been raised from Rs. 2,30,000/- to Rs. 3,74,950/-. The judgment referred by the petitioner is not applicable in the facts and circumstances of the present case as the petitioner is already getting the alimony pendente lite of Rs. 70,000/- per month and has not stated any fact that the said amount is insufficient.
- 27.** The petitioner has filed the present review application on the ground that there is an error apparent on the face of the record as this Court has not considered the affidavit of assets filed by the opposite party wherein the opposite party has declared his monthly income as Rs. 3,74,950/- and the same has not been considered by this Court. The petitioner has filed the revisional application against the order passed by the Learned Court of Additional Sessions Judge, 6th Court, Alipore dated 8th May, 2023 wherein the Learned District Judge has considered all the facts including the affidavit of assets and had rejected the application filed by the petitioner. This Court while dismissing the civil revision application dated 29th May, 2023 held that this Court has perused the order passed by the Learned Additional Sessions Judge and did not find any reason to interfere with the order and accordingly, the Civil Revision was dismissed.
- 28.** In view of the above, this Court did not find any error apparent on the face of the record and as such the application filed by the petitioner for review of the order dated 29th May, 2023 is dismissed.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)