

Item No.68
13.09.2023
Court. No. 19
GB

C.O. 2132 of 2021

Sanchayan Roy
Vs.
Tania Sinha @ Roy

Mr. Uday Shankar Chattopadhyay,
Mr. Suman Sankar Chatterjee,
Mr. Santanu Maji,
Ms. Snigdha Saha

... for the Petitioner.

Mr. Pratip Mukherjee,
Mr. Arnab Jyoti Das

... for the Opposite Party.

This revisional application arises out of an order dated November 17, 2021 passed by the learned Additional District Judge, Fast Track 2nd Court at Purba Bardhaman in Misc. Case No.14 of 2018.

Misc. Case No.14 of 2018 is an application under Section 36 of the Special Marriage Act, filed for alimony pendente lite in Matrimonial Suit No.63 of 2017. The learned court below directed the petitioner to pay litigation cost of Rs.25,000/- along with alimony pendente lite of Rs.18,000/- per month, from the date of the application.

The petitioner is aggrieved by the order impugned on the ground that the evidence available on record with regard to the qualification of the wife and income of the wife had not been considered. The fact that the husband had categorically deposed that the wife was employed, had been ignored by the learned court below.

Mr. Chatterjee, learned advocate appearing on behalf of the petitioner relies on a decision of the Hon'ble Delhi High Court in the matter of ***X versus Y*** passed in ***MAT.APP.(F.C.) 248 of 2019***.

Mr. Mukherjee, learned advocate appearing on behalf of the opposite party/wife submits that the income of the husband was more than what had been disclosed before the learned court below. At present, the father of the opposite part/wife has expired and she was in a very disadvantaged situation. The learned court below, upon considering the submissions of the parties was of the view that even assuming that the wife was qualified enough to earn and sustain herself, the said fact would not absolve the husband from his responsibility to maintain the wife.

Heard the learned advocates for the respective parties. It appears to this Court that the contention of the husband that the wife was employed had been dealt with by the learned trial court. Even then, the court deemed it fit to allow Rs.18,000/- as maintenance pendente lite. The income of the husband which was available in the evidence before the court was approximately Rs.75,000/-. The contention of the petitioner that the wife earned around Rs.30,000/- is not backed by any evidence apart from the deposition of the husband. In an Indian society, it is usually the wife who either gives up her job or reduces her

working hours in order to nurture the child. The marriage took place in 2009. The child was born in 2010. The marriage continued for around six years. On and from 2017, matrimonial discord arose and the parties were separated. The child is with the father. It is evident that between 2009 to 2016/17, the opposite party/wife was unemployed and looking after the child. At this stage, this Court would hardly presume that when the matrimonial discord took place and the parties were separated, the wife would suddenly be employed in a very high paying job. Thus, the question of disallowing the alimony pendente lite to the wife is out of question.

The learned court below rightly dealt with the issue and observed that the husband was not absolved from his responsibility to maintain his wife. However, as the wife/opposite party is well educated, it is expected that she would not waste her time but definitely would make serious endeavour to find an engagement and be employed not only to earn her livelihood but also to improve the quality of her life.

Under such circumstances, this Court is of the view that even assuming the opposite party/wife is capable of earning Rs.20,000/- to 30,000/- per month, a sum of Rs.15,000/- per month as maintenance pendente lite on and from date of the application is just and proper. The wife is entitled to maintain a certain

standard of living. The amount should cover housing expenses, food, clothing, shelter, medicines etc.

This revisional application is disposed of with a direction upon the petitioner to pay maintenance of Rs.15,000/- per month on and from the date of filing of the application under Section 36 of the Special Marriage Act. The current maintenance shall be paid on and from the month of September, 2023 within 7th of October 2023 and thereafter month by month within 7th of every succeeding month. Apart from the litigation cost, the amount already paid on the basis of the order of this court, shall be adjusted against the total arrears which have now accumulated.

The arrear maintenance on and from the date of the application till August 2023 shall be calculated after deducting the amount of Rs.50,000/- and the monthly maintenance as directed to be paid at the sum of Rs.10,000/- from June 2023 to August 2023, shall be deducted and the remaining amount shall be paid within six monthly instalments. First of such instalment, amounting to Rs.2,00,000/- shall be paid within October 18, 2023. The remaining amount shall be liquidated in five equal monthly instalments. Each of such instalments shall be paid with the current maintenance for the relevant months. Fraction if any, shall be added to the last instalment.

In case of default, the execution case shall proceed in accordance with law and the court shall take necessary steps. In case of compliance of this order, the learned court below shall proceed expeditiously and dispose of the proceeding within eight months without granting unnecessary adjournments to either of the party.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)