

Item No. 20
09.10.2023
Court. No. 19
GB

C.O. 2774 of 2023
With
CAN 1 of 2023

Pritam Chakraborty
Vs.
Moumita Chakraborty

Mr. Sayan Raul

...for the Petitioner.

The revisional application arises out of an order dated February 4, 2023 passed by the learned Additional District Judge, 2nd Court at Serampore, Hooghly in Misc. Case No.03 of 2022. Misc. Case No.03 of 2022 is an application for maintenance pendente lite arising out of Matrimonial Suit No.3515 of 2017. The misc. case was filed by the opposite party.

The petitioner submits that the learned court below wrongly allowed maintenance pendente lite of Rs.4,000/- per month to the opposite party without considering the fact that she was living as the wife of one Biswajeet Aditya @ Jeet Aditya. The son was also using the surname of Jeet Aditya, which leads to a presumption that the opposite party is already married to another person. Hence, she was not liable to be maintained by the petitioner.

It appears from the records that the suit for divorce was filed on the ground of cruelty and desertion. Adultery is not one of the grounds for divorce. The wife contested the said suit by filing a written statement. She prayed for maintenance pendente lite of Rs.12,000/- for herself and

Rs.12,500/- for her minor son. Further allegation was of mental torture, demand for dowry, physical violence, etc. The husband/petitioner filed an objection to the said application, denying the allegation of physical and mental cruelty. The husband was an employee of Talento Aviation Services Private Limited and earned Rs.8,000/- per month. That as the wife was living with Jeet Aditya in a separate accommodation, the husband was not liable to maintain her.

The learned court found that the 10 years old child was under the care and custody of the mother. The law mandated the husband to pay maintenance to the wife. During the pendency of the suit for dissolution of marriage, the wife was entitled to maintenance pendente lite. There was no record to show that the wife had an independent income to maintain herself. Although, the husband had contended that he earned Rs.8,000/- per month, but in the declaration of assets and liabilities the husband had stated that he was unemployed and his parents was dependent on him. The husband did not file any bank statement as proof of income. The husband could not avoid his responsibility to maintain the wife by suppressing his income.

Under such circumstances, considering the background of the case and the evidence available, the learned court below fixed Rs.4,000/-per month for the wife and Rs.4,000/- per month for the child. The petitioner has not been able to show any documents which would persuade this Court to hold that the amount granted by the learned court below, was not justified. The petitioner is an able

bodied man who is bound by law to maintain his wife and child. The question of adultery is a matter of trial. Moreover, the suit has not been filed for divorce on the ground of adultery. An allegation that the wife has a relationship with some other person and/or was in living with him, cannot be a ground for refusal of maintenance pendente lite by the court without such fact being established in a court of law. The allegation is not full proof and as such the revisional application does not merit any further consideration.

Accordingly, the revisional application along with CAN 1 of 2023 are disposed of.

All the parties are directed to act on the basis of the learned advocate's communication and/or server copy of this order.

(Shampa Sarkar, J.)