

25.5.2023

ct. no. 5

sl. No. 3

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**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 3448 of 2022

**Sujay Parui
versus
Shreya Parui**

Mr. Srijib Chakraborty
Mr. Ashim Kumar Chatterjee
Mr. Saumyajit Ghosal
... for the petitioner

Mr. Arijit Roy
Mr. A. Dey ..for the opposite party

Pursuant to the direction given on 22nd May, 2023, notice was served upon the opposite party. Mr. Arijit Roy, learned counsel is appearing for the opposite party with an undertaking to file Vokalatnama in the department by 5th June, 2023. Mr. Roy, learned advocate for the opposite party seeking accommodation to come back with affidavit-in-opposition to the petition filed by the petitioner.

This revisional application challenges the order dated 10th August, 2022 passed by the learned Trial Court granting *alimony pendente lite* to Smt. Shreya Parui to the tune of Rs. 15,000/- per month and a sum of Rs. 20,000/- has been awarded for the minor daughter of the parties.

Mr. Srijib Chakraborty, learned Counsel for the petitioner by filing supplementary affidavit has annexed certain documents indicating status of Smt. Shreya

Parui as a partner of Spectracom Tech having 50% share in the Firm. That apart, it is contended that Smt. Shreya Parui is working for gain in a firm under the style STEELMAN TELECOME PVT. LTD. and she earns a sum of Rs. 21,810/- per month. According to Mr. Chakraborty, the opposite party / wife since has sufficient means to maintain herself and she is not entitled to anything from her husband towards her maintenance. The impugned order therefore, should not be allowed to remain in force. With all fairness, Mr. Chakraborty admits that these documents filed by the petitioner by way of supplementary affidavit were not before the learned Trial Court when the impugned order was passed.

Since the documents relied upon by the petitioner are sprouting fundamental question as to the entitlement of the opposite party/wife to have an order of maintenance and at the same time, the principle of natural justice demands that the opposite party / wife should be given an opportunity to have her say with reference to the contention made by her husband.

In my opinion, the issue of maintenance cannot be decided without taking evidence. When the husband claims that his wife has a regular income, onus lies upon him to prove the same under Section 103 of the Evidence Act and at the same time wife should be allowed to refute such contention by adducing evidence.

Therefore, the learned Trial Court is directed to dispose of the application for maintenance proceeding under Misc. Case No. 68 of 2019 by recording evidence of the parties.

This application should be decided within three months from date. No adjournment should be granted to either of the parties on mere asking.

Under such circumstances, the impugned order, in my view should be set aside on condition that the petitioner as husband shall keep on paying the amount awarded by the learned Trial Court to his wife without prejudice to his rights till the issue is decided.

Mr. Chakraborty, however, submits that his client is ready to pay a sum of Rs. 1,00,000/- to the opposite party / wife as one time ad hoc measure without prejudice to his rights which sounds justified.

The petitioner husband shall also pay a sum of Rs. 15,000/- per month towards the maintenance of his daughter till disposal of the petition by the learned Trial Court. Petitioner shall pay Rs. 1,00,000/- to the opposite party within two weeks from date, by way of electronic transfer directly to her bank account, detail of which shall be furnished by the opposite party within a week from date.

The parties are directed to submit afresh affidavits strictly in compliance with the direction given by the

Hon'ble Apex Court in ***Rajnish Vs. Neha & Anr.***, reported in **(2021) 2 SCC 364** by 15th June, 2023.

Mr. Chakraborty, learned Advocate for the petitioner has expressed his anxiety over proceeding for execution of the order. When the order is not in existence, the question of execution of the order does not arise.

The learned Trial Court shall decide the issue of maintenance without being influenced by this order which has been passed without delving deep into the matter on merit.

This revisional application is thus disposed of.

All parties are directed to act on the server copy of this order.

(Siddhartha Roy Chowdhury, J.)