

Item No. 7&8
13.12.2023
Court. No. 19
GB

C.O. 3735 of 2022

Smt. Tripti Chakraborty
Vs.
Sri Anjan Chakraborty

With

C.O. 3452 of 2022

Sri Anjan Chakraborty
Vs.
Smt. Tripti Chakraborty

*Mr. Amal Krishna Saha,
Mr. Sankar Biswas,
Ms. Ananya Adhikary*

...for the Petitioner.

*Mr. Sukanta Chakraborty,
Mr. Anindya Halder*

...for the Opposite Party.

C.O. 3735 of 2022 is allowed. Till the pending applications, one filed by the husband for reduction of the maintenance pendente lite and the other filed by the wife for enhancement of the maintenance pendente lite, are decided finally, the suit shall remain stayed. Once the husband pays the amount directed, after disposal of the applications, the suit will continue.

The law is settled. When applications for maintenance are pending, the suit should not proceed. When the husband fails to pay the maintenance also, the suit remains stayed. In this case, the petitioner in C.O.3452 of 2022 has been paying an amount of Rs.25,000/- per month on and from July 2022,

that is, after his retirement. This Court finds that there are arrears and there are issues to be adjudicated.

Under such circumstances, it is justified that the Matrimonial Suit No.3 of 2019 which is pending before the learned Additional District Judge, Fast Track, 2nd Court at Alipore, remains stayed till the disposal of the pending applications.

C.O.3452 of 2022 is an application filed by the husband challenging an order dated September 26, 2022 passed by the learned Additional District Judge, Fast Track, 2nd Court at Alipore in Matrimonial Suit No.3 of 2019. By the said order, the application under Section 151 of the Code of Civil Procedure, filed by the husband/petitioner on June 28, 2022, was rejected. The husband prayed for modification of the maintenance pendente lite, which was granted in favour of the wife, on account of changed circumstances.

According to the husband/petitioner, his monthly pension is Rs.1,08,300/- and it would be impossible for him to pay Rs.45,000/- per month for maintenance towards the wife and the child after meeting his regular monthly expenses. According to the petitioner, a sum of Rs.25,000/- would be a reasonable amount which he would be comfortable to pay, considering his financial situation after superannuation.

The learned court was of the view that as the amount of maintenance awarded to the wife and the child at the rate of Rs.45,000/- per month from the date of filing of the application under Section 24 of the Hindu Marriage Act had

been affirmed by the Hon'ble Supreme Court, the said amount could not be modified.

This Court is of the view that the learned court proceeded on a misconception. Changed circumstances would always entitle any party to pray for modification of the amount of maintenance granted in a proceeding, be it enhancement or reduction. Of course, it is for the court to decide whether to modify the amount, on the merits of the contentions of the parties. It also appears that the wife has filed an application for enhancement of the amount of maintenance pendente lite on various grounds, including subsequent development and sale of valuable property.

Having considered the rival contentions, this Court is of the view that the order dated September 26, 2022 requires modification to the extent that the application filed by the husband under Section 151 of the Code and the application filed by the wife for enhancement, should be disposed of analogously, upon granting opportunity to all the parties to file their documentary evidence and also adduce oral evidence. Till the disposal of the said applications, the Matrimonial Suit No.3 of 2019 shall remain stayed. The petitioner/husband will pay a sum of Rs.2.5 lakhs to the wife and the child towards arrears in two equal monthly instalments, which shall be adjusted with the final quantum fixed by the learned trial court, upon adjudication of the two applications. First of such instalment shall be paid within January 10, 2024 and the second instalment shall be paid within February 15, 2024. All payments and acceptance will

be without prejudice to the rights and contentions of the parties.

Needless to mention, the petitioner shall continue to pay a sum of Rs.25,000/- per month as current maintenance, till the disposal of the applications.

This Court has not gone into the merits and demerits of the claims and counter-claims of the parties. The learned court shall mandatorily dispose of the two applications within a period of three months from the next date fixed, on their merits.

Accordingly, both the revisional applications are disposed of.

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

(Shampa Sarkar, J.)