

**01.12.
2023**

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

C.O. 18 of 2023

**Sri Swapan Sarkar
-Versus-
Smt. Anima Sarkar**

Mr. Anirban Banerjee, Adv.
Mr. Dilip Roy, Adv. **...For the Petitioner.**

Mr. Partha Bhowmik, Adv.
...For the Opposite Party.

Service of notice upon the learned Counsel appearing on behalf of the Opposite Party in the Court below is taken on record.

This is an application under Article 227 of the Constitution of India against order no.45 dated 06.06.2018 passed by the learned Additional District Judge, 1st Court, Jalpaiguri in Misc. Case no. 15 of 2016 (54/2017) arising out of MAT Suit no. 364 of 2015.

Petitioner contended that the Opposite Party herein as plaintiff filed the aforesaid suit for divorce against the petitioner herein/husband.

During pendency of the suit plaintiff /opposite party/wife filed an application under Section 24 of the Hindu Marriage Act claiming pendente lite maintenance of Rs. 5,000/- per month for herself and Rs.5,000/- per month for her minor child.

Learned Court below after hearing the parties was pleased to pass an order of pendente lite maintenance of Rs. 4,000/- per month for the plaintiff/wife and Rs.4,000/- for her minor child.

Petitioner herein submits that the petitioner is a daily labour and earns Rs. 10,000/- per month and as such amount awarded by the Court below is excessive.

He further submits that the Court below acted illegally in not considering that the plaintiff/wife/opposite party is not entitled to get any amount of maintenance as she has voluntarily left her matrimonial house and she has refused to return to the matrimonial house in spite of several attempts made by the petitioner.

Moreover, Court below did not consider that the monthly earnings of the petitioner herein is only Rs. 10,000/- per month. Accordingly, petitioner has prayed for setting aside the order impugned.

Considering the facts and circumstances and also the submissions made by the petitioner herein, it appears that the statement of the petitioner on oath that he is a daily labourer and earns Rs. 10,000/- per month, remains uncontroverted.

In such view of the matter and considering the workable formula as has been applied in several judgements, present application is hereby disposed of with a direction upon the petitioner to pay Rs.3,000/- per month to the Opposite Party/ wife and Rs. 3,000/- per month to the child within 15th of each succeeding English Calendar month and such order becomes effective from the date of filing the application under Section 24 of the Hindu Marriage Act. The arrear amount of maintenance shall be paid by the petitioner to the wife by ten monthly installments within 31.10.2024.

The impugned order no. 45 dated 06.06.2018 thus stands modified

C.O. No.18 of 2023 is, accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)