

24-08-2023
Court No.3
AD/8.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

C.O. 89 of 2023

**SANJIT BISWAS
Vs.
SUMANA KARMAKAR**

Mr. Nabankur Paul
... for the Petitioner.

Mr. Sujit Kumar Sarker
Smt. Esha Acharya
Smt. Srishti Sarker
... for the Opposite Party.

The instant Criminal Revision is
filed against the impugned Order No.
40 dated 11th July, 2023 passed by the
Learned Additional District Judge,
Siliguri in Miscellaneous Case No. 7 of
2020 arising out of Matrimonial Suit
No. 260 of 2019 whereby the Trial
Judge allowed alimony pendente lite
at a rate of Rs.20,000/- per month
with effect from the date of

appearance of the Opposite Party/wife in the parent matrimonial suit. The Petitioner/husband of the present application, was further directed to pay Rs.5,000/- per month as arrear of maintenance till fully paid.

The parties herein are husband and wife who married according to hindu rites and customs. Subsequently, the present Petitioner/husband filed the parent matrimonial suit under Section 13 of the Hindu Marriage Act, 1955 praying for dissolution of marriage by decree of divorce. In the parent matrimonial suit, the present Opposite Party/wife, who is the respondent also in the parent matrimonial suit, filed an application under Section 24 of the Hindu Marriage Act, 1955. The said application was registered as Miscellaneous Case No. 07 of 2020. The present Petitioner/husband contested the application by filing written objection.

The Trial Court, in terms of the impugned order, as stated above, allowed alimony pendente lite.

The Counsel for the present Petitioner/husband firstly argued that although it was observed by the Trial Court that the Opposite Party/wife earned Rs.55,000/- per month assigned no reason why in spite of drawing salary of about Rs.55,000/- per month, she is not able to maintain herself, giving rise to a claim of alimony pendente lite. Secondly, the Trial Court did not consider the purport and meaning of Section 24 of the Hindu Marriage Act, 1955. He further argued that when the wife is a Central Government employee and is getting reimbursement of all her medical expenses there is no justification of allowance Rs. 20,000/- per month in her favour for medical expenses. According to him, the impugned order should be set aside.

Per contra, the Learned Counsel for the Opposite Party/wife submitted that the instant application is not maintainable against an interlocutory order since the impugned order is an interlocutory one allowing alimony pendente lite. Secondly, the Learned Counsel argued that the Trial Court passed the impugned order after taking into consideration various factual aspects, factors and considerations as well as the applicable principle of law while passing the impugned order. According to him, the Trial Judge applied the correct principle of law enunciated and expounded in various judicial decisions. He referred to a decision a Single Bench of Delhi High Court passed in ***Sh. Bharat Hegde Vs. Smt. Saroj Hegde [CM (M) No. 40/2005]*** and a decision of the Supreme Court of India in ***Rajnesh Vs. Neha & Anr. [(2021) 2 SCC 324]*** to substantiate argument.

I have heard the rival submissions.

The instant application is filed under Article 227 of the Constitution of India. Article 227 has its own ambit. A separate proceeding was drawn up on the basis of the application filed under section 24 of the Hindu Marriage Act, 1955; the application was registered under separate number and in terms of the impugned order the proceeding reached its finality. Therefore, the plea of the Learned Counsel for the Opposite Party/wife is not acceptable.

The Trial Court, in the impugned order observed that the Opposite Party/wife's take home monthly salary is Rs.54,418/-. It is admitted in the application filed under Section 24 that the Opposite Party/wife is an employee of Indian Postal Services. The question which the Trial Court did not consider is why, in spite of receiving take home salary of Rs.54, 418/- per month, the

Opposite Party/wife is unable to maintain herself. The Trial Court did not consider the meaning and purport of the clause “*no independent income sufficient for her or his support and the necessary expenses of the proceeding*” contained in section 24 of the Act as applicable in the present context. It was also not considered by the Trial Court whether the Opposite Party/Wife is at all entitled to any financial support in respect of her medical expenses or whether alimony pendente lite includes payment on account of medical expenses in the given facts and circumstances of the case. The impugned order, therefore, demands interference, as the Trial Court failed to exercise jurisdiction conferred upon it by the law.

In nutshell, the instant application is allowed. The impugned order, as aforesaid, is hereby set aside. The Trial Court shall reconsider the application filed under section 24 of the Hindu Marriage Act

and pass fresh order after hearing both the parties and applying the correct principle of law, without being influenced by this order within one month from receiving this Order.

A copy of this order may be sent to the trial court forthwith.

(SUGATO MAJUMDAR, J.)