

April 16, 2024
Sl. No.66
Court No.19
s.biswas

CO 34 of 2024

Rita Das (Dey)
vs.
Pratap Kumar Das

Mr. Somnath Roy Chowdhury
Ms. Arpita Chowdhury

... for the petitioner

Mr. Siddhartha Paul

... for the opposite party

1. The revisional application arises out of an order dated November 30, 2023 passed by the learned Additional District Judge, 5th Court at Howrah in Matrimonial Suit No.456 of 2010.
2. By the order impugned, the learned court rejected an application under Section 151 of the Code of Civil Procedure filed by the wife, claiming enhancement of the maintenance pendente lite. The wife and the children together were allowed to be paid Rs.7000/- as maintenance pendente lite in the application under Section 24 of the Hindu Marriage Act. When the application for enhancement was filed, the husband's income had allegedly gone up to Rs.1,50,000/-.
3. The learned advocate for the husband submits that maintenance in other proceedings have also been awarded by the court and total amount of Rs.14,000/- is being paid.
4. The learned court, by the order impugned, recorded that the wife has been allowed the monetary relief of Rs.14,000/- in Misc. Case

No.449 of 2010 under the Protection of Women from Domestic Violence Act. The court proceeded to decide that the highest quantum awarded by the courts in the multiple proceedings initiated by the wife, i.e., Rs.14,000/- was sufficient.

5. In my opinion, the order impugned suffers from the following perversity:- (a) irrespective of what was awarded as maintenance by the other competent courts, the wife could always pray for enhancement under changed circumstance; (b) it was incumbent upon the court to decide whether there existed any changed circumstances as pleaded by the wife; c) In case the court found that circumstances had changed as the husband's income had gone up, the quantification of the amount should have been made; d) Present cost of living, additional expenses etc were also to be considered.
6. Under such circumstances, the revisional application is disposed of, upon setting aside the order impugned and with a direction upon the learned court to rehear the application under Section 151 of the Code of Civil Procedure, seeking enhancement of the maintenance pendente lite on the facts of the case and upon allowing the parties to adduce oral or documentary evidence. This court has not gone

into the merits of the issues involved. It is made clear that the said application should be disposed of within a period of three months from the communication of the order and should be disposed of prior to disposal of the suit. Needless to mention that written objection to the said application shall be filed by the husband within two weeks from date.

7. The revisional application stands disposed of accordingly.
8. All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)