

26.2.2024
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Ct. no. 652
sb

C.O. 139 of 2020

Sri Prasenjit Mondal
Vs.
Smt. Iti Mondal alias Smt. Iti Koley

Mr. Prasenjit Burman
Ms. Payal Koley
Mr. Swapnesh Mallik ...for the Petitioner

Mr. Bhudeb Bhattacharyya, Sr. Adv.
Mr. Sugata Shankar Roy
...for the Opposite party

photocopy of the medial papers filed by the opposite party in support of her case, is taken on record.

The opposite party herein is the legally married wife of the petitioner. The marriage was solemnised on 12th December, 2007. However, the matrimonial relationship was not happy and for which the petitioner herein filed a suit for dissolution of marriage being MAT Suit no. 691 of 2012 which is pending before the court of learned Additional District Judge, Fast Track, 1st Court, Howrah. In the said matrimonial proceeding, the opposite party/wife filed an application under Section 24 of the Hindu Marriage Act 1955 and it was registered as Misc. case no. 56 of 2015, wherein the petitioner has sought for pendente lite maintenance of Rs. 20,000/-per month and Rs. 25,000/- towards litigation cost.

Learned Trial court had taken up the said Misc. case filed under Section 24 of the Act of 1955 and by an

order dated 18th April, 2018, directed the husband/petitioner herein to pay Rs. 5000/- per month towards maintenance and Rs. 20,000/- per month towards litigation cost.

The petitioner submits that he has already paid the litigation cost and he is also regularly paying the pendente lite maintenance to her wife @ Rs. 5000 per month.

The petitioner alleged that her wife unnecessarily taking time to complete cross examination of the petitioner and during pendency of trial she has filed another application under Section 151 of the Code of Civil Procedure praying for a direction upon the petitioner for payment of medical expenses contending that she has no independent income of her own and in the above backdrop she had to admit at a Nursing Home for treatment on 21.08.2018 where she had undergone an operation in her legs and she had to incur Rs, 1,15,000/- towards medical expenses as an indoor patient and she is bed-ridden and has to incur an additional expenditure of about Rs. 7,000/- per month for post-operative care.

Petitioner opposing such prayer, filed objection by making evasive denial. No positive case has been made out to show that the petition has any independent income nor any positive defence has been taken challenging the medical papers filed by wife/opposite party herein.

However, said application under Section 151 of the Code, was taken up by the court below who after hearing the parties, was pleased to pass order directing the petitioner/ husband to pay Rs. 50,000/- in favour of the respondent/wife towards medical expenses, by the impugned order.

Being aggrieved by that order impugned no. 77 dated 7.11.2019, the petitioner herein contends that the court below ought to have observed, when the petitioner/husband has paid litigation cost and when he has to pay pendente lite maintenance regularly without any default, an additional burden for payment of medical expenses in connection with an application under Section 151 of the Code, ought not to have allowed. He further submits that before incurring the medical expenses, the petitioner was not at all informed and the court below without examining the genuineness of the documents produced by the opposite party/wife had relied the documents and had passed the order impugned. He further submits that the court below has failed to record any cogent reason for allowing the medical expenses in favour of the opposite party/wife and had passed an arbitrary order exceeding his jurisdiction, which is required to be interfered by this court invoking jurisdiction under Article 227 of the Constitution of India.

Mr. Bhattacharyya, learned counsel for the opposite party raised strong objection contending that her knee

was operated on urgent basis and she had to incur the medical expenses which is amounting to more than two lakhs and as such the order impugned passed by the court below, where he has only awarded an amount of Rs. 50,000/- towards medical expenses in favour of the petitioner, does not call for interference.

I have considered the submissions made by both the parties. It appears that court below had gone through the documents in connection with medical bills and vouchers filed by the wife/opposite party herein and he found that the documents filed by the petitioner are genuine. The husband/petitioner herein has also not challenged those documents. His contention is that he was not informed when the expenses were incurred by the opposite party/wife. There is also nothing to show that the petitioner has any independent income to bear the aforesaid medical expense.

Here it is not in dispute that opposite party herein is the wife of petitioner herein and there is nothing to show that she has any independent income. The general rule is that so long she is his wife, her well being are to be taken care of by the husband. The only consideration for exercising the jurisdiction by the court in such cases is whether wife has any independent income sufficient to meet such life-saving expenses and the court has ample power in passing such order to meet the exigency relying

upon the documents, which are believable in the absence of positive challenge.

Accordingly, I find that the order impugned is neither perverse nor illegal. Nor it can be said that the court below has made the order exceeding his jurisdiction. However, liberty is hereby given to the petitioner that the amount awarded by the court below towards medical expenses shall be paid by the petitioner herein by six monthly installment within next six months from the date of this order as prayed by the petitioner.

Learned court below is further directed to make every endeavour for expeditious disposal of the pending matrimonial proceeding in terms of direction regarding expeditious disposal passed by this court in C.O. 978/2019 and he will make his best effort to conclude the entire proceeding preferably within a period of ten months from the date of communication of the order.

C.O. 139 of 2020 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)