

S/L 27
15.04.2024
Court. No. 3
*Sourav/
Suwayan*

CO 360 of 2019

**Shila Karmakar (Malik)
Vs.
Uttam Karmakar**

*Mr. Gopal Chandra Ghosh
Mr. Raj Krishna Mondal*

...for the petitioner.

Mr. Jagabandhu Ray

...for the opposite party.

1. Both the petitioner/wife and the opposite party/husband are represented by their respective learned advocates.
2. This Court has heard the learned advocates for the parties in support and against the instant revisional application.
3. The instant case is now taken up for passing appropriate order.
4. In this revisional application, the Order No. 48 dated 06.12.2018 as passed by the learned Additional District Judge, 2nd Court, Arambagh, Hooghly in Misc. Case No. 03 of 2016 as filed under Section 24 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'said Act') arising out of Matrimonial Suit No. 69 of 2016 has been assailed by the petitioner/wife of the said Misc. case on the ground of inadequacy of quantum of alimony *pendente lite* as awarded by the learned trial Court.
5. In support of the instant revisional application, Mr. Ghosh, learned advocate for the petitioner/wife at the

very outset draws attention of this Court to the petition under Section 24 of the said Act as filed by the present petitioner before the trial Court. Attention of this Court is also drawn to the evidence of P.W. 1 vis-à-vis the evidence of O.P.W. 1 as recorded by the trial Court.

6. It is contended that while passing the impugned order, trial Court has failed to visualize the actual income of the opposite party/husband and, therefore, the awarded sum towards alimony *pendente lite* as well as the cost of litigation are exceptionally low. It is further argued on behalf of the petitioner/wife that by no stretch of imagination a person can be expected to lead a decent life with a paltry sum of Rs. 3,000/- per month. It is further argued that considering the increasing cost of litigation, the litigation cost as assessed by the learned trial Court is equally inadequate and the same is required to be increased.
7. While opposing the prayer as made in the instant revisional application, Mr. Ray, learned advocate for the opposite party/husband at the very outset submits before this Court that learned trial Court is very much justified in passing the impugned order inasmuch as the learned trial Court has rightly noticed that a sum of Rs. 1 lakh is lying with the petitioner/wife as has been given by the opposite party/husband to the petitioner/wife in course of a village settlement.

8. It is further argued that considering the livelihood of the opposite party/husband, learned trial Court rightly directed to pay a sum of Rs. 3,000/- per month towards alimony *pendente lite* as well as the cost of litigation to the tune of Rs. 5,000/- payable within two months from the date of passing of the impugned order.
9. On perusal of the entire materials as placed before this Court, it appears that in her petition under Section 24 of the said Act, it has been contended by the petitioner/wife that her husband's income is Rs. 35,000/- per month and that the petitioner being a lady and a housewife has got no independent income to maintain herself since she has been thrown away from her matrimonial home by the opposite party/husband. While filing his written objection, however, the opposite party/husband in paragraph 4 of the said objection though denied that his income is to the tune of Rs. 35,000/- as claimed by his wife but he has not disclosed of his actual income in his written objection.
10. On perusal of the evidence of P.W. 1, this Court finds that it is the consistent version of the petitioner/wife that her husband's monthly income is to the tune of Rs. 35,000/-. On a cursory perusal of the evidence of O.P.W. 1, this Court again finds that though the O.P.W. 1 being the husband/opposite party denied such contention but he has again not disclosed about his actual income though the same falls within the

special knowledge of him in view of the provision of Section 106 of the Evidence Act and at the same time he has not disclosed his actual avocation.

11. Since the opposite party/husband before the learned trial Court has failed to establish his actual income which is within his special knowledge, this Court considers that the learned trial Court while assessing the quantum of maintenance ought to have given some credence over the evidence adduced by the petitioner/wife regarding the income of her husband since it can be safely presumed that a wife has some idea about the income of her husband.
12. From the cross-examination of O.P.W. 1, this Court finds that the O.P.W. 1 for the first time expressed that he is a worker in a jewellery shop and, however, at the later stage he admitted that the shop belongs to him.
13. On due consideration of the entire materials as placed before this Court, it thus appears to this Court that it has been established in course of proceeding of the Misc. Case No. 03 of 2016 that the opposite party/husband is the owner of the jewellery shop namely; Laxmi Narayan Jewellery. It is settled position of law that a wife is entitled to lead a life equal to the standard of her husband.
14. Such being the position, this Court considers that the quantum of alimony *pendente lite* at the rate of Rs. 3,000/- per month as has been awarded by the learned trial Court is exceptionally low and this Court

is in agreement with the submission of Mr. Ghosh that a person at this time is not expected to live even a moderate life with a sum of Rs. 100/- per day.

15. In view of such, this Court considers that the impugned order requires interference of this Court.
16. This Court thus in exercise of its plenary power and while disposing the instant revisional application directs the opposite party/husband, Sri Uttam Karmakar to pay alimony *pendente lite* at the rate of Rs. 6,000/- per month to the petitioner/wife, Shila Karmakar (Malik) from the date of filing of the Misc. Case No. 03 of 2016 till disposal of the MAT Suit No. 69 of 2016. The cost of litigation as assessed by the learned trial Court is increased to the tune of Rs. 10,000/-.
17. It is further directed that the quantum of alimony *pendente lite* as assessed by this Court is to be paid by the opposite party/husband to the petitioner/wife within seven days of the each succeeding month for which it becomes due and the arrears of alimony *pendente lite* shall have to be paid in equal installments of Rs. 1,500/- each along with current maintenance till its liquidation. The increased amount of cost of litigation is to be paid by the husband/opposite party in two installments i.e. by the last day of May, 2024 and by the last day of July, 2024.
18. It is further made clear that till the current and arrears of the alimony *pendente lite* have not been

paid in full, the proceedings of MAT Suit No. 69 of 2016 shall remain stayed.

19. With the aforementioned observation, the instant revisional application being **CO 360 of 2019** is hereby allowed and disposed of.
20. Consequently, the impugned Order No. 48 dated 06.12.2018 as passed by the learned Additional District Judge, 2nd Court, Arambagh, Hooghly in Misc. Case No. 03 of 2016 arising out of MAT Suit No. 69 of 2016 is modified to the extent indicated hereinabove.
21. Both the parties as well as the learned trial Court are hereby directed to act on the server copy of this order duly downloaded from the official website of this Court.
22. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)