

IN THE HIGH COURT AT CALCUTTA

Civil Revision

Appellate Side

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. 231 of 2016

Sarat Kumar Rai

Vs.

Sushma Rai

For the Petitioner :Mr. Abhijit Basu (via video
Conference)

:Mr. Arghya Kamal Das

Hearing concluded on : March 8, 2024

Judgement delivered on : April 05, 2024

Md. Shabbar Rashidi, J

1. The revisional application is in assailment of an order date May 12, 2015 passed by learned 3rd Additional District Judge, Darjeeling in Misc Case No. 4 of 2014 arising out of Matrimonial Suit No. 10 of 2013.
2. The facts giving rise to the instant proceeding, in an epitome, is that the revisionist/petitioner was

employed as a primary school teacher on temporary basis, getting a consolidated pay of less than ₹. 15,000/-per mensem.

3. The revisionist was married to the Opposite Party on April 14, 2008 according to Hindu customs and rites and a male child was born out of the aforesaid wedlock on December 20, 2009. While in such matrimony, the respondent left the house of the revisionist on and from December 23, 2010 without any justifiable reasons and deserted the petitioner.

4. Since the respondent voluntarily withdrew from the society of the petitioner and deserted him, the petitioner/ revisionist filed a suit under Section 13 of Hindu Marriage Act, in the Court of learned District Judge, Darjeeling, seeking a decree of divorce which was registered as Matrimonial Suit No. 10 of 2013.

5. The respondent contested the said suit by filing written objection/statement. Evidence was led by the parties in the said proceeding. During the pendency of such proceeding, the respondent/wife filed an

application under Section 24 of the Hindu Marriage Act.

6. Such application under Section 24 of the Hindu Marriage Act was allowed by the learned trial court by the impugned order dated May 12, 2015 directing the petitioner/ revisionist to pay a sum of ₹. 10,000/- per month as alimony pendente lite to the respondent with effect from February 21, 2013 i.e. the date of filing of Matrimonial Suit No. 10 of 2013 until disposal of the Matrimonial Suit. In addition, the revisionist was further directed to pay a sum of ₹. 30,000/- to the respondent towards litigation costs. The revisionist was directed to pay the arrears of the monthly alimony pendente lite, to the respondent, amounting to ₹. 2, 60, 000/ in ten equal monthly instalments of ₹. 26,000/- each.

7. At the same time, the original Matrimonial Suit No. 10 of 2013 was also disposed of on the self same day i.e. May 12, 2015 decreeing the suit in favour of the revisionist. By the said decree, the marriage tie

between the revisionist and the respondent was dissolved by a decree of divorce.

8. It is the case of the revisionist that the learned trial Court passed the impugned order without appreciating the true perspective of the facts and circumstances of the case and without taking into consideration the income of the revisionist. The learned trial court also overlooked the fact that the revisionist was under obligation to maintain his aged mother. According to the revisionist, the impugned order, given the status and income of the petitioner, is incapable of performance.

9. The revisionist has also stated that since the date of the decree of divorce, the petitioner has been regularly depositing a sum of ₹. 4000/- per month in the bank account of the respondent wife. Under such circumstances, the impugned order directing payment of alimony pendente lite at the rate of ₹. 10,000/- per month is bad, illegal, unauthorized and without jurisdiction.

10. The revisionist has assailed the impugned order on the grounds that the same is based on conjectures and surmises having no foundational basis. The impugned order was passed absolutely without considering the income of the petitioner which is incapable of performance. The learned trial court was not justified in placing more reliance on the statement on affidavit vis-a-vis verified statement. Moreover, the original Matrimonial suit was disposed of within a span of 2 years and taking into account the nature of the litigation as well as period spent in disposing the same, the cost of litigation assessed at ₹. 30,000/- is too exorbitant.

11. Hence, by filing the instant revisional application, the revisionist/husband has prayed for setting aside the impugned order being **order No.19 dated May 12, 2015.**

12. Section 24 of the Hindu Marriage Act, 1955 lays down the provisions for maintenance *pendentelite* in the following terms. That's to say:

24. Maintenance pendente lite and expenses of proceedings.—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

- 13.** Upon going through the impugned order, it transpires that the learned trial Court while adjudicating the application under Section 24 of the Act of 1955 filed on behalf of the respondent/ wife, had taken into consideration that the wife/respondent

had no independent source of income to support her own life and that of her child. Admittedly, the child born out of the wedlock of the petitioner and the respondent is living with the respondent/wife.

13. There were statement and counter statement by the parties in the said proceeding with regard to the capability of the respondent to support her life as well as the litigation costs. The respondent/wife came up with a definite case that the petitioner/husband had sufficient income as he was working as a teacher. On the other hand, the petitioner/husband came up with a specific case that he was employed as a primary school teacher on temporary basis, getting a consolidated pay of less than ₹. 15,000/-per month. Besides his family, the petitioner was obliged to maintain his aged mother.

14. The learned trial Court passed the impugned order directing the petitioner to pay a maintenance pendente lite at the rate of ₹. 10,000/- per month. Such order was apparently passed in consideration of the

fact that the statement with regard to income of the petitioner, made on behalf of the respondent/wife was made on affidavit whereas the statement to the effect that the petitioner worked as a primary school teacher and used to earn a consolidated remuneration of less than ₹. 15,000/- per month was supported by a mere verification. As such, the statement made on affidavit was considered to be more reliable than that of a verified statement made on behalf of the petitioner.

- 15.** As noted above, the impugned order disposing of the application of the respondent under Section 24 of the Act of 1955 was passed simultaneously with the disposal of the Matrimonial Suit itself on the self same day. The Matrimonial Suit was disposed of in consideration of the full and final evidence led by the parties. In such circumstances, placing more reliance on a statement made on affidavit vis-à-vis that supported by verification seems to be unjustified in view of the fact that at the time of consideration of the application under Section 24 of the Hindu Marriage

Act, entire evidence led at the trial of the Matrimonial Suit was available for perusal. There were sufficient evidences on record, led by the parties, to consider the prayer of the respondent/wife.

16. The judgment delivered in Matrimonial Suit No. 10 of 2013 clearly exhibits that the learned trial court, in consideration of the evidence, came to a conclusion that the respondent/wife wilfully deserted the petitioner/husband and that the respondent failed to establish that she was subjected to torture by the petitioner/husband, nevertheless, she left her matrimonial house repeatedly, without any reason.

17. The case of the petitioner to the effect that he was working as a primary school teacher on contractual basis and was getting a consolidated remuneration of less than ₹. 15,000/- per month was never denied by the respondent/wife. She also did not deny, rather admitted, that the aged mother of the petitioner was living with the petitioner. Not only that, learned trialCourt also observed, while disposing of the

Matrimonial Suit, that the respondent/wife being a graduate and in having developed a habit of leaving her matrimonial house without any rhyme and reason, was quite capable of earning her livelihood, though not specifically proved that she was actually earning to support her life and that of her child. Incidentally, the respondent/wife never applied for grant of permanent alimony from her husband, either by preferring an application under Section 25 of the Act of 1955 or through any other proceeding known to law.

- 18.** The petitioner/husband has made out a definite case that he has been regularly paying maintenance to the respondent at the rate of ₹. 4000/- per month since the very inception. Such fact surely amounts to an admission on the part of the petitioner/husband acknowledging that the respondent has no independent income sufficient for her support as well as for bearing the necessary expenses of the proceeding. In view of the facts, there is nothing to interfere with the findings in the impugned order with

reference to entitlement of the respondent/wife for an alimony pendente lite together with the cost of litigation as against the petitioner herein i.e. her husband.

19. So far as quantum of such alimony is concerned, by the impugned order, the petitioner/ husband was directed to pay alimony pendente lite at the rate of ₹. 10,000/- per month. The opposite party wife, by her averments made in her petition under Section 24 of the Hindu Marriage Act, claimed that the petitioner was earning a sum of ₹. 35,000/- per month. Accordingly, alimony pendente lite was prayed at the rate of Rs. 15,000/- per month.

20. The impugned order goes to show that the learned trial Court, while passing the impugned order, took into consideration the evidence led at the trial of original Matrimonial Suit No. 10 of 2013. The trial court appears to have taken into consideration that the petitioner/ husband was working as a school teacher and was also the secretary of a political party. Furthermore, certain treatment documents of the

petitioner/ husband were taken into consideration to arrive at a conclusion that since the petitioner was able to get himself treated at highly expensive hospitals, he belonged to the rich category of the society. Taking the aforesaid facts into consideration, it was held by the learned trial Court that the statement made by the opposite party/wife on affidavit was placed in a better position than that made by the petitioner/ husband supported by verification. Relying upon such statements, the learned trial Court went on to allow the application under section 24 of the Hindu Marriage Act and ordered payment of alimony at the rates stipulated in the impugned order.

21. No evidence was placed before Learned Trial Court to justify that the petitioner / husband was earning ₹. 35,000/- per month. In fact, the order of the trial court directing the petitioner to pay alimony at the rate of ₹. 10,000/- per month, seems to be unfounded. There is no justification in the impugned order as to on what

considerations the trial court fixed the amount at ₹. 10,000/- per month.

22. On the contrary, the petitioner/ husband came up with a definite case that he was working as a primary school teacher on contractual basis getting a salary of less than ₹. 15,000/- a month. The status of the petitioner as a school teacher was never denied, rather admitted by the opposite party/ wife. There was evidence in this regard led on behalf of the petitioners in the original matrimonial suit. In view of the facts, the case of the petitioner that he was a primary school teacher and was getting a remuneration of less than ₹.15,000/- per month seems to be more reliable than a wild statement on the part of the opposite party-wife that her husband was earning ₹. 35,000/- per month.

23. In the facts and circumstances of the case, the petitioner husband has been directed to pay his wife an alimony pendente lite of ₹. 10,000/- per month which comes around 75% of the known income of the petitioner. It is admitted position that the petitioner-

husband has been voluntarily paying maintenance at the rate of ₹. 4,000/- per month to the opposite party wife which again comes to merely around 25% of the income of the husband. It cannot be denied that the petitioner being the husband was duty bound to provide maintenance to his wife and child.

24. In the facts and circumstances of the case, taking into consideration the income of the petitioner / husband and the prevailing market scenario, a sum of ₹. 7,000/- would be a justified amount of maintenance, pendente lite which comes around 40% of the income of the petitioner, payable from the date of filing of the original matrimonial suit No. 10 of 2013 till disposal of such case on May 12, 2015. There appears no justification in interfering with the findings in the impugned order with regard to the litigation costs.

25. Accordingly, in view of the discussions made hereinbefore, the impugned order is hereby affirmed subject to modifications as indicated above. The

impugned order is hereby modified to the extent that the petitioner would be liable to pay an alimony pendente lite at the rate of ₹. 7,000/- per month instead of ₹. 10,000/- per month as directed in the impugned order. The petitioner shall make payment of arrears of the dues of alimony pendente lite, if any, subject to the aforesaid modifications made hereinbefore. It is however clarified that the amount paid by the petitioner to the opposite party in excess of the dues at the modified rates, if any, shall not be liable to refund.

26. In the result, thus, the instant revisional applications being C.O. No. 231 of 2016 is hereby disposed of in terms of the modifications indicated hereinbefore.

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

Md. Shabbar Rashidi, J.