March 7, 2024
Sl. No.4 & 5
Court No.19
s.biswas

CO 501 of 2022

Sri Prasenjit Nath
vs.
Smt. Madhuparna Nath nee Bose

WITH

CO 605 of 2022

Smt. Madhuparna Nath nee Bose
vs.
Sri Prasenjit Nath

Mr. Partha Pratim Roy
Mr. Sandip Das
Mr. Adil Rashid
Mr. R. K. Khandelwal
Mr. Sajal Kanti Bhattacharyya
Mr. Sarthak Burman
Mr. Vivek Paswan
Ms. Afreen Khan
... for the petitioner/husband in CO 501 of 2022
& for the opposite party in CO 605 of 2022
Mr. Soumya Majumdar
Mr. Suprotim Laha
Mr. Binay Kumar Jain
Mr. Piyush Jain
... for the opposite party/wife in CO 501 of 2022
& for the petitioner in CO 605 of 2022

In re: CO 501 of 2022

1. This revisional application arises out of an order dated December 9, 2021 passed by the learned Additional District Judge, 6th Court, Alipore in Misc. Case No.401 of 2018, arising out of Matrimonial Suit No.627 of 2017.

2. By the order impugned, the learned court directed the petitioner/husband to pay maintenance pendente lite of Rs.50,000/- from the date of application under Section 36 of the Special Marriage Act, i.e., June 27, 2018 till disposal of the suit. Along with the said maintenance

pendente lite, an amount of Rs.20000/- as litigation cost was also awarded.

3. Mr. Roy, learned advocate appearing for the petitioner/husband submits that the income of the husband and income tax return, which was filed periodically in the USA, where the husband resides, had not been adduced in evidence. The husband failed to prove his income before the learned court and on the basis of certain bank statements of 2010-2011, the learned court presumed that the monthly income of the petitioner/husband was over a crore per annum. The bank statements which were taken into consideration by the learned court was for the year 2010-11 and subsequently, due to recession, unemployment, change of jobs, contractual jobs, project based jobs, etc. the petitioner's income had been sufficiently diminished. When the learned court passed the order in 2021, the income was not beyond Rs.14 to 15 lakhs a year. In support of such contention, a supplementary affidavit has been filed before this court.

4. The next contention of Mr. Roy is that the petitioner had already transferred Rs.32 lakhs to the wife for purchase of a flat, but as the wife failed to do so, a money suit was filed. The money suit was decreed and an appeal was

preferred by the wife. The entire amount has been secured by the wife by way of a bank guarantee, but the interest from the said amount is used by the wife. Thus, no further maintenance would be necessary for the wife under the present circumstances.

5. Mr. Majumdar, learned advocate for the opposite party/wife submits that the husband was present in court, but did not depose in the proceeding. He intentionally avoided the docks. He was living in USA and had substantial income. The return which was filed before the court by way of supplementary affidavit, did not reflect his actual income. Irrespective of his income and nature of job, the petitioner was unable to prove his income. The court had no other alternative but to deduce the same from the documents which were on record. Even assuming that the wife was enjoying Rs.20,000/- as interest, the amount was not enough for the wife. Considering the market index, inflation, cost of living, etc., Rs.20,000/- was insufficient.

6. It is also submitted that not a single farthing has been paid towards maintenance pendente lite to the wife, despite the order of the court. The court recorded that the petitioner was willing to pay Rs.10,000/- per month. The wife has also filed

CO 605 of 2022 challenging the same order on the ground that the income of the husband was way beyond what was calculated by the court and the wife was entitled to higher amount.

7. Having considered the order impugned, this court finds that there is not a single document which would show the present income of the husband or the income of the husband during the period when the adjudication was done. Although it is true that bank statement of earlier years were taken into consideration, but if the husband had opted not to participate in the proceedings in the court and prove his income as per his salary slips and appointment letters, the court could not be faulted. However, this is a case where evidence would be necessary. This court is of the view that the matter should be remanded for a fresh hearing of the application under Section 36 of the Special Marriage Act. Both the parties are directed to adduce further evidence, both oral and documentary. The husband shall be entitled to prove his income on and from 2018 till date, on the basis of his appointment letters, job contracts, pay slips, IT returns etc. The wife is entitled to rebut such evidence, in accordance with law.

8. This court directs that litigation cost of Rs.20,000/- as directed by the court, shall be treated as full and final and be paid to the wife within two weeks from date. The determination will only be restricted to the quantum of maintenance pendente lite. Even assuming that the wife earns monthly interest from the amount which was allegedly transmitted by the petitioner for purchase of a flat, in my opinion the wife is entitled to more than such amount for her maintenance. Thus, till the issue is decided finally by the learned court, a sum of Rs.15,000/- per month shall be paid to the wife on an from March, 2024. The payment for March 2024 shall be made within April 10, 2024, thereafter month by month within 10th day of every succeeding month till the learned court decides the issue. It appears that the application for maintenance pendente lite was filed on June 27, 2018. Under such circumstances, towards arrear maintenance, an ad hoc sum of Rs.7 lakhs shall be paid to the wife within April 15, 2024 and the said amount will be adjusted after disposal of the application under Section 36 of the Special Marriage Act.
9. The revisional application stands disposed of accordingly.

10. This order will not impact the pending appeal arising out of the money suit.

In re: CO 605 of 2022

11. In view of the direction passed in CO 501 of 2022, CO 605 of 2022 also stands disposed of.
12. All the parties are directed to act on the basis of the server copy of the order.
13. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)