

25.04.2024
Sl. No.26(ML)
srm

C.O. No. 1012 of 2023
Smt. Krishna Bhattacharjee
Versus
Sri Indujit Bhattahcarjee

Mr. Prantick Ghosh

...for the Petitioner.

Syed Nazmul Hossain,
Sk. Mainuddin

...for the Opposite Party.

1. The revisional application arises out of an order dated September 9, 2022, passed by the learned Additional District Judge, Fast Track, 5th Court at Barasat, North 24-Parganas, in Misc. Case No.9 of 2020. Misc. Case No.9 of 2020 arose out of Matrimonial Suit No.1495 of 2020. The suit for divorce was filed by the husband under Section 36 of the Special Marriage Act, 1954.
2. By the order impugned, the learned court awarded maintenance of Rs. 12,000/- per month for the child and the wife and one time litigation cost of Rs.25,000/-.
3. The wife has challenged the said order on the ground that admittedly, the net income of the husband was around Rs.80,000/- per month and he earned in dollars.

He is an employee of a shipping company. The quantum of maintenance should be enhanced.

4. The husband works in Royal Caribbean International company and Rs.80,000/- per month was his regular income.
5. Mr. Ghosh, learned Advocate for the opposite party/husband submits that the wife had computed her regular expenses including maintenance for her father. The husband's job was contractual in nature and the pay was variable. Moreover, the elderly parents were dependent on the income of the opposite party. The quantum awarded by the learned court was adequate and reasonable.
6. Having heard learned Advocates for the respective parties, this court finds that the net income of the husband is \$932.47. The pay slip for January, 2024 has been produced before this Court by Mr. Ghosh. Even assuming that he is onshore for around 3 to 4 months a year, yet Rs.12,000/- per month for the wife and the child together, is very meagre. A man who earns \$932.47 per month exclusive of the statutory deductions, cannot expect that his wife and child will survive on Rs.12,000/-

per month. Some additional income of the wife from tuition, has been recorded by the court.

7. Under such circumstances, this Court is of the view that Rs.20,000/- per month towards maintenance of the wife and the child (Rs.10,000/- each) is reasonable and fair.
8. The order impugned is modified.
9. The payment of Rs.20,000/- per month on and from May, 2024 shall commence from 10th of May, 2024 and thereafter month by month within 10th of each month when it falls due.
10. The amount of maintenance of Rs.20,000/- from the date of filing of the application till April, 2024, which are now arrears, shall be paid in six equal monthly instalments, along with the current maintenance.
11. The suit shall proceed in accordance with law.
12. In case of default, the wife is at liberty to take steps in accordance with law and the suit shall not proceed.
13. Limitation in filing an application under Article 227 of the Constitution of India is three years. Thus, the contention of Mr. Ghosh that the application was filed belatedly, is misconceived.

14. The parameters for fixing the quantum of maintenance have been discussed elaborately in many decisions by the courts.

15. The Apex Court in *Rajnesh v. Neha and ors. reported in (2021) 2 SCC 324* discussed the various criteria for determining the quantum of maintenance and the relevant factors to be taken into consideration in order to quantify the amount. The object behind granting maintenance was to ensure that the dependent spouse was not reduced to destitution or vagrancy on account of failure of the marriage. Yet, an excessive and unreasonable amount could not be imposed as a punishment upon the other spouse. While discussing a decision of the Delhi High Court, the Apex Court also approved the factors to be relevant. Such finding of the Apex Court is at paragraph 57 of the judgment. The relevant paragraph is quoted below:-

“(v) The Delhi High Court in *Bharat Hedge v Smt. Saroj Hegde* laid down the following factors to be considered for determining maintenance :

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant’s liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act. 17.

(vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

16. In the celebrated judgment of Justice Krishna Iyer in the matter of *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and ors.* reported in (1978) 4 SCC 70, the object behind promulgation of maintenance laws, had been discussed, which is quoted below:-

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of [Article 15\(3\)](#) reinforced by [Article 39](#). We have no doubt that Sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker Sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts.”

17. In *Rajnesh (supra)* it was held that even if the wife had some income, the same would not be a ground for

reducing the maintenance determined to be payable by the husband. The relevant paragraphs are set out below:-

“62. The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

63. In *Shailja & Anr. v Khobbanna*, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home.⁴⁰ Sustenance does not mean, and cannot be allowed to mean mere survival.

64. In *Sunita Kachwaha & Ors. v Anil Kachwaha* the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

65. The Bombay High Court in *Sanjay Damodar Kale v Kalyani Sanjay Kale* while relying upon the judgment in *Sunita Kachwaha* (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

66. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a *Chander Prakash Bodhraj v. Shila Rani Chander Prakash*. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the

family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.”

18. The revisional application is, thus, disposed of.

19. This order is restricted to the disposal of the revisional application and the learned court will dispose of the suit in accordance with law.

20. There shall be no order as to costs.

21. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)