

27.03.2024
Ct. No. 19
Sl. No.53
Cp

C.O. No. 1041 of 2023

Sri Partha Chakrabarti
Vs.
Smt. Tamali Chakrabarti

Mr. Suranjan Mandal

.....for the petitioner.

1. The revisional application arises out of an order dated December 24, 2019, passed by the learned Additional District Judge, 8th Court, Alipore in Misc. Case No. 725 of 2018. The Misc. Case was filed in connection with Matrimonial Suit No. 2135 of 2017.
2. The learned advocate for the petitioner submits that the learned court had awarded an excessive amount for maintenance of the opposite party and the minor child.
3. This court finds that the learned trial court had awarded Rs.15,000/- for the wife and Rs.12,000/- for the child. The learned court held that on the basis of the papers filed by the petitioner, the gross pay for January, 2019 was Rs.63,084/-. The GPF deduction was Rs.2500/-. On calculating the net pay per month, the court arrived at the figure of Rs.60,584/-. The income tax return dated July 12, 2018 was considered by the learned court which showed that the petitioner had a gross annual income of Rs.10,39,202/-.

Deducting the tax payable, the refund etc. the learned court was of the view that the petitioner was liable to pay the amount as claimed by the wife. The fact that the wife did not have any income of her own was on record. The expenses incurred for education of the child at Don-Bosco School, Bandel, was also taken into consideration. The court held that Rs.12,000/- as maintenance pendente lite for the minor child would be reasonable and adequate. The learned court specifically recorded that apart from some medical expenses for his eye treatment, the petitioner had not been able to establish that he had any other major liability.

4. The petitioner could not produce any document to show that the quantum arrived at by the court was not in consonance with the evidence available. Under such circumstances, the court rightly allowed Rs.15,000/- for the wife and Rs.12,000/- for the child. Additionally Rs.20,000/- as one time litigation cost was also awarded.
5. The petitioner is a teacher in Khidderpore Academy, a higher secondary school which is a government aided school. When the matrimonial suit was filed in 2018, his salary was around Rs.60,000/-. It is expected that the salary must have gone up within the time which has lapsed since the date of the order. The learned

court had considered the income of the petitioner for the month of January, 2019 and the order was passed on December 24, 2019.

6. Thus, this court does not find any illegality in the order impugned. The maintenance which has been awarded commensurates with the status of the parties. Rs.12,000/- per month for the child who is a student of Don-Bosco School, Bandel and is 13 years old, is not excessive. Apart from the school fees, session fee etc., the child also requires private tuitions. Expenses for the child's well-being, entertainment, extra-curricular activities, medical facilities etc. should also be taken into consideration while calculating the appropriate amount to be awarded to the child.
7. The opposite party no.1 who is the wife of a school teacher of a reputed school must also enjoy the same status as her husband. Considering the housing costs, miscellaneous costs, medical expenses etc. and the costs incurred for day-to-day living, Rs.15,000/- per month is not excessive. It is not disproportionate to the income of the husband.
8. The court has based the calculations entirely on the income of the petitioner and the income tax return filed by the petitioner. The amount awarded appears to be reasonable and not based on any surmise and conjecture. The petitioner has not been able to show

any document to controvert the findings of the learned court.

9. 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 and not as a punishment to the other spouse. While discussing a decision of the Delhi High Court, the Apex Court also approved of the factors treated to be relevant for awarding maintenance. 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.”

10. The famous 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, on the object of maintenance laws has been quoted:-

“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.”

11. Under such circumstances, the revisional application is dismissed. There shall be no order as to costs. The order impugned is upheld.

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

(Shampa Sarkar, J.)