

25.4.2024

60-61

Ct. no. 652

sb

CO 2163 of 2017

Smt. Saswati Sinha

Vs.

Mr. Justice (Retd.) Maharaj Sinha

with

CO 1558 of 2017

Maharaj Sinha

Vs.

Saswati Sinha

Mr. Probal Kr. Mukherjee, Sr. Adv.

Ms. Shebatee Datta

...for the Petitioner

in CO 1558 of 2017

...for the Opposite party

in CO 2163 of 2017

In spite of service, opposite parties in CO 1558 of 2017 is not represented.

Both the applications being CO 2163 of 2017 and CO 1558 of 2017 have been preferred challenging the order no. 39 dated 22nd November, 2016 passed in Misc. case no. 31 of 2015 arising from Matrimonial Suit no. 77 of 2015 passed by learned Additional District Judge, 16th Court, Alipore.

The petitioner herein in CO 1558 of 2017 and opposite party in CO 2163 of 2017, instituted aforesaid matrimonial suit against the opposite party/petitioner/wife seeking dissolution of marriage under Section 13 of the Hindu Marriage Act. In the said

suit, the opposite party in CO 2163 of 2017 and petitioner in CO 1558 of 2017 filed an application under Section 24 of the Hindu Marriage Act seeking maintenance pendente lite, which was registered as Misc. case no. 31 of 2015. Learned court below by the order impugned, was pleased to grant alimony pendent lite of Rs. 25,000/- per month in favour of the opposite party/wife and also litigation cost of Rs. 20,000/- at a time.

Being aggrieved by that order, the wife/opposite party preferred application being CO 2163 of 2017 contending that the amount is meager and insufficient and the court below did not consider all aspects before granting such amount of maintenance. On the contrary, the husband/petitioner challenging the same order preferred application being CO 1558 of 2017, contending that the order awarding pendente lite maintenance is not supported by any reason. He has not expressed what is the basis of his determination of interim maintenance and how he came to such ultimate finding. According to Mr. Mukherjee, learned counsel for the petitioner, said amount is exorbitant for a retired person and has been passed without considering the assets and liabilities of the parties to the suit. Accordingly, the petitioners in both the applications have prayed for praying appropriate order after setting aside the order impugned.

I have gone through the order impugned and considered the submissions made on behalf of the petitioner/husband/opposite party. On perusal of the order impugned, it appears that the learned court below has quoted the submissions made on behalf of the parties and suddenly has jumped to the conclusion that according to the status and present income of the opposite party, the wife is entitled to get pendente lite maintenance of Rs. 25,000/- per month and litigation cost of Rs. 20,000/-. The determination of maintenance amount is absolutely not based on any reason. Moreover, in view of the recent judicial pronouncement in the case of **Rajnesh Vs. Neha and another (2021) 2 SCC 324**, it is now compulsion that for determination of maintenance amount including interim maintenance, the affidavit of disclosure of Assets and Liabilities annexed as enclosure I, II, III of the said judgment, as may be applicable, shall be filed by both the parties in all maintenance proceeding (paragraph 129).

In such view of the matter, I find that the order impugned is perverse since it is not based upon reason in reaching the ultimate finding.

Accordingly, the order impugned is hereby set aside. Learned court below is directed to hear the petition made by the wife/petitioner/opposite party herein afresh, after giving opportunity to both the parties to contest and to dispose of the application

following the guidelines laid down by the Apex court in **Rajnesh Vs. Neha (supra)** at the earliest.

CO 2163 of 2017 and CO 1558 of 2017 are accordingly disposed of.

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

(Ajoy Kumar Mukherjee, J.)