

Ct. No. 652
105
akb
08.04
2024

C.O. 2178 of 2018
Ratan Kumar Das
-Versus-
Smt. Lily Das nee Roy @ Lili Das

Ms. Poulami Chakraborty ...For the Petitioner

Ms. Manali Biswas ...For the Opposite Party

The case of the petitioner is that the petitioner and the opposite party got married on 16th July, 2001, under the Hindu Marriage Act, 1955 and due to said wedlock, two female children were born. However, matrimonial life was not peaceful and alleging cruelty, the wife/opposite party left her matrimonial home on 11th August, 2012, with two minor children.

The petitioner herein husband filed a matrimonial suit, being Mat. Suit No. 162 of 2016, before the Court below, seeking dissolution of marriage.

The wife/opposite party herein in the said suit filed an application under Section 24 of the Hindu Marriage Act, seeking litigation cost and maintenance pendent lite for two children which was registered as Miscellaneous Case No. 43 of 2016. It is further alleged that the wife/opposite party herein was forced to live separately from her husband along with her two minor children and the petitioner never contributed any amount for the maintenance of the daughters though he is temporary employee of department of

Panchayet. The petitioner/husband also has business of medicine and landed property beside being an employee of village panchayat and thereby his total monthly income is not less than Rs. 30,000/-. Accordingly, petitioner had prayed for pendent lite maintenance to the tune of Rs. 4,000/- per month for each of her minor daughters and also litigation cost of Rs. 15,000/-.

The opposite party / wife is a primary school teacher. Learned Court below after hearing both the parties allowed the said application in part by the impugned order by directing the husband/petitioner herein to pay Rs. 2,000/- per month to each daughter totaling to Rs. 4,000/- per month, from the date of filing of the application commencing from the month of December, 2016. The Court below further directed to pay arrear amount of maintenance pendent lite @ Rs. 4,000/- per month from the month of December, 2016 to March, 2018 amounting to Rs. 64,000/- by ten equal consecutive monthly installments, commencing from May, 2018. However the Court below rejected petitioner's prayer for litigation cost since she is a salaried woman, being a primary school teacher.

Being aggrieved by that order, petitioner/husband herein contended that the amount awarded is exorbitant and the Court below has passed the order without considering the

financial condition of the petitioner who earns much less than her wife. Learned Counsel for the petitioner further submits that the wife / opposite party herein is a well-paid primary school teacher and has sufficient financial capacity to maintain both the children.

Ms. Poulami Chakraborty, learned Counsel appearing on behalf of the petitioner strenuously argued that the Court below has acted illegally in awarding interim maintenance to the children in a proceeding under Section 24 of the Act of 1955, though said Section does not provide for any maintenance to the children. Accordingly, she has prayed for setting aside the order impugned.

Ms. Manali Biswas, learned Counsel appearing on behalf of the opposite party raised objection contending that the husband/petitioner herein has huge landed property wherefrom he earns a lot and he also runs a medical shop and he is still working as an employee of village Gram Panachayat wherefrom also he is getting salary and being an able bodied person and also being the father of the two children he is bound to maintain his minor daughters.

Having considered the facts and circumstances of the case and upon going through the materials placed on record, it appears that in the present Application under Section 24, the petitioner wife has claimed for maintenance

of her two children and for litigation cost. It is true that language of Section 24 does not talk of grant of pendent lite maintenance of the children as there is separate provision under Section 26 for maintenance of minor children toward interim relief in any pending proceeding and for which ideally the petitioner ought to have filed the application under Section 24 (for litigation cost) read with Section 26 or a separate petition under Section 26 for maintenance of children but non-mention of Section 26 in the application does not affect the substance of the prayer for maintenance and even if no formal application has been made under Section 26 or a wrong section has been quoted in the application for the interim maintenance of the children, still relief under Section 26 can be granted. This is because Courts should look to the substance of the application and should not pay too much importance to the technicalities of the pleadings. The Court has complete discretion in this regard and considering welfare of the children, in making the order impugned, Court below has not committed any illegality or impropriety. It is not in dispute that the children are in custody of the mother/petitioner. However a father is liable for maintenance of his minor children even if they are in custody of the mother. As such I do not find any perversity or impropriety in the order impugned which can

call for interference of this Court, invoking jurisdiction under Article 227 of the Constitution of India.

Accordingly, the application, being C.O. 2178 of 2018 is dismissed.

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

(Ajoy Kumar Mukherjee, J.)