

Ct.
No.
652

104
akb

15.01
2024

C.O. 2752 of 2019
Sudhangsu Sekhar Das
-Versus-
Soma Das (Nee Kashtha)

Mr. Gobinda Chandra Baidya **...For the Petitioner**

Mr. Uttam Banerjee
Mr. Aniruddha Singha Roy **...For the Opposite Party**

Challenging order No. 33 dated 31st May, 2019 passed in Matrimonial Case No. 15 of 2015 dated 24th August, 2015 present application has been preferred.

By the impugned order the learned Court below allowed the petitioner's prayer for striking off the defence of the husband/petitioner herein for non-payment of arrear amount of maintenance.

Petitioner herein contended that the marriage between the petitioner and the opposite party was registered on 29th August, 2009. Thereafter bitterness developed and for which wife/opposite party herein left her matrimonial house and filed a suit for dissolution of marriage, being Matrimonial Suit No. 1204 of 2012. Thereafter defendant of that suit who is petitioner herein filed a case for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.

During pendency of the said suit, the wife / petitioner filed a Misc. Case, being Misc. Case No. 46 of 2014 under Section 24 of the Hindu Marriage Act seeking pendente lite maintenance of Rs. 53,000/- per month and Rs. 50,000/- towards litigation cost.

The Court below by an order dated 4th July, 2015 directed the petitioner to pay Rs. 20,000/-, towards cost of

litigation and Rs. 18,000/- per month towards maintenance pendente lite.

The husband petitioner herein preferred a Civil Revisional Application against the said order and this Court while disposing of the said revisional application was pleased to set aside the order impugned. However, this Court directed the husband / opposite party to pay Rs. 18,000/- per month from the month of July, 2015 till September, 2015 and also go on paying equal amount of alimony pendente lite as interim maintenance within 15th of each month till the disposal of the application under Section 24 of the Hindu Marriage Act.

Mr. Gobinda Chandra Baidya, learned Counsel appearing on behalf of the petitioner submits that the husband/petitioner herein has retired from his service in the month of March, 2023. Though this Court on 30.9.2015 while disposing of C.O. 3630 of 2015 had made specific direction in the form of request to dispose of the said application afresh as expeditiously as possible without granting any unnecessary adjournments to either of the parties preferably within a month therefrom but even after expiry of more than eight years, in compliance of the said order passed in C.O. 3630 of 2015, the application filed by the opposite party herein under Section 24 has not yet been disposed of. He further submits that in compliance with the order passed by this Court in C.O. 3630 of 2015 he has already deposited Rs. 3,42,000/- in the month of December, 2019. Accordingly, in view of such payment he has prayed for setting aside the order wherein the Court below has struck off the defence of the husband / defendant.

Mr. Uttam Banerjee, learned Counsel appearing on

behalf of the opposite party submits that it is true that after the aforesaid order passed by this Court, the petition under Section 24 has not yet been disposed of by the Court below. However, the husband / petitioner herein has only deposited Rs. 3,42,000/-, but in the meantime the arrear amount of maintenance has reached more than Rs. 7 lakhs and accordingly the petitioner may be directed to pay the said arrear amount of maintenance.

Learned Counsel appearing on behalf of the husband/petitioner submits that his client is ready and willing to pay the arrear amount of maintenance but the Trial Court may be directed to dispose of the application under Section 24 at the earliest and the order regarding striking off the defence may be set aside, so that petitioner / husband may contest the suit.

Having considered the facts and circumstances of the case and after considering the submissions made by both the parties, learned Court below is directed to dispose of the application under Section 24 of the of the Hindu Marriage Act of the wife/opposite party within a period of eight weeks from the date of communication of this order.

The order impugned so far as it relates to the striking off defence is hereby set aside since a portion of arrear amount of maintenance has already been paid by the petitioner herein. However, the petitioner / husband is directed to pay the arrear amount of maintenance along with current maintenance in terms of the order passed by this Court in C.O. 3630 of 2015 within a period of 180 days from the date of communication of this order.

In the case of non-payment of the said amount, the

wife opposite party will be at liberty to seek for appropriate remedy before the Court below.

The revisional application, being C.O. 2752 of 2019 is accordingly disposed of.

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.)