

Item **08.08.**
No. **2024**
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 2571 of 2024

(Assigned)

Sri Shib Sankar Mandal
Vs
Smt. Mamata Mondal

Mr. Sankar Prasad Dalapati,
Mr. Safik Dewan,
Mr. Satyajit Mahata,
Mr. Sourav Mondal. for the petitioner.

Ms. Manali Biswas,
... for the opposite party..

1. This revisional application has been filed assailing the order dated 4th March, 2024 passed by the learned Additional District Judge, 15th Court, Alipore in connection with Misc. Case No. 463 of 2018 under Section 24 of the Hindu Marriage Act, 1955, whereby learned Judge passed an order directing the husband/petitioner herein to pay maintenance *pendenti lite* @ Rs.13,000/- per month to the wife/opposite party herein within 7th of each succeeding month with effect from the date of application.
2. Learned counsel on behalf of the petitioner has drawn attention of this Court to the order No. 29

dated 24th July, 2023 and impugned order No. 32 dated 4th March, 2024 and submitted that by the order No. 29 dated 24th July, 2023, learned Judge fixed the next date of hearing on the issue of taking evidence in terms of judgment of the Hon'ble Apex Court, but learned Judge did not decide the issue by any order and ultimately by the impugned order dated 4th March, 2024 disposed of the application under Section 24 of the Hindu Marriage Act relying on affidavit of assets filed by the respective parties.

3. Learned counsel on behalf of the petitioner has submitted that no opportunity of hearing was given to the petitioner/husband prior to passing the order under Section 24 of the Hindu Marriage Act with a direction to pay maintenance.
4. Learned counsel on behalf of the petitioner has further submitted that he has no objection regarding quantum of maintenance.
5. Learned counsel on behalf of the opposite party/wife has submitted that issue of taking evidence was heard by the order No. 31 dated 06.02.2024 and fixed the date on 04.03.2024 for passing order which has been impugned in this revisional application.
6. After hearing of both sides, I find that following two issues are to be decided in this revisional application as follows:-

Issue- 1. Whether there is any scope to decide the issue of taking evidence at the time of disposal of an application under Section 24 of the Hindu Marriage Act in terms of principle laid down by the Hon'ble Apex Court in the Case of **Rajnesh Vs. Neha and Another** reported in **(2021) 2 SCC 324**.

Issue -2. Whether learned Trial Judge can dispose of an application under Section 24 of the Hindu Marriage Act only on the affidavits of assets filed by the respective parties in terms of **Rajnesh (supra)**.

7. In **Rajnesh (supra)**, observation was made by the by the Hon'ble Apex Court in paragraph 72.3 which is quoted below:-

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for his purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings.

On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;”

8. From the observation of the Hon’ble Apex Court, I find that there is no scope for recording evidence at the time of disposal of an application under Section 24 of the Hindu Marriage Act. That apart, from the order No. 31 dated 06.02.2024, it is found that learned Judge heard both sides and reserved order to be passed on 04.03.2024. Learned Judge passed the impugned order on 04.03.2024 deciding the quantum of the alimony *pendenti lite* under Section 24 of the Hindu Marriage Act.
9. In view of observation of **Rajnesh (supra)**, I find hardly any scope for any Trial Court to decide the issue whether the evidence is required to be recorded to dispose of an application under Section 24 of the Hindu Marriage Act. That apart, relying on the observation quoted above, there is no scope even to hear the parties save and except the affidavits of assets filed by the parties to this proceeding.
10. In view of the matter, I do not find any infirmity in order impugned in this revisional application.

11. With this observation, the revisional application stands dismissed.
12. Connected applications, if any, also stand disposed of.
13. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
14. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)