

*In The High Court At Calcutta
Civil Revisional Jurisdiction
(Appellate Side)*

C.O. 2573 of 2024

**Smt. Sreya Tarafder
Vs.
Sri Priyadeep Majumdar**

Mr. Mrinal Kanti Mukherjee,
Ms. Purnima Panda ... For the petitioner.

Mr. Abhirup Chakraborty ... For the opposite party.

The wife, the respondent in Matrimonial Suit No. 559 of 2019 pending before the 10th Court of learned Additional District Judge, at Alipore, District – 24 Parganas (South), is the petitioner of the instant application under Article 227 of the Constitution of India.

The petitioner had filed an application under Section 36 of the Special Marriage Act, 1954 for alimony pendente lite which was registered before the learned Trial Judge as Misc. Case No. 352 of 2019.

The learned Trial Judge by the order impugned has dismissed the said Misc. case holding inter alia that the wife is qualified enough to earn and she is earning Rs. 3,000/- to Rs. 4,000/- per month by giving private tuition.

The actual earning not the capacity of earning is a consideration in deciding the right of the wife to get maintenance *pendente lite*.

Whether the wife is capable of earning or whether she is actually earning are two different requirements (See. ***SHAILJA AND ANOTHER vs. KHOBBANNA*** reported in **(2018) 12 SCC 199**).

The order impugned is set aside. The learned Trial Judge is directed to rehear the application for alimony *pendente lite* afresh in accordance with law and till the disposal of the said application, the further proceeding of the aforesaid matrimonial suit shall remain stayed.

C.O. 2573 of 2024 is thus disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)