

30.01.2024
Court No. 19
Item no.39
CP

C.O. No. 2808 of 2023

Lovely Biswas

Vs.

Chiranjib Biswas

Mr. Ananda Gopal Mukherjee

.....for the petitioner.

Ms. Papiya Chattopadhyay

.....for the opposite party.

The revisional application arises out of an order dated May 20, 2023, passed by the learned Additional District Judge, Fast Track 5th Court, Barasat in Misc. Case No. 44 of 2020 arising out of Matrimonial Suit No. 116 of 2019.

By the order impugned, the learned court inter alia allowed alimony pendente lite of Rs.15,000/- per month for the petitioner and the minor daughter with effect from the date of application and litigation cost of Rs.20,000/-.

The petitioner has challenged the said order on the following grounds:-

- a) The quantum of maintenance pendente lite is low as the petitioner has to maintain herself and her minor daughter who studies in an english medium school and also undertakes several co-curricular activities.

- b) The salary of the husband, at the relevant point of time, was Rs.1,09,325.70 per month and after deduction, the net salary was Rs.67,190/-. The learned court ought to have allowed at least one third of the said amount.
- c) The husband did not have any financially dependent parent. His mother enjoyed family pension of Rs.15,000/- per month.
- d) The husband failed to prove that the wife had any income of her own. Despite such failure, the learned court awarded a meagre sum of Rs.15,000/- for the wife and the child. The income from house property was also recorded by the learned court to be around Rs.25,000/- per month.

The learned advocate for the husband submits that the petitioner/wife is an educated person and was earning a handsome amount. She had initiated several proceedings against the husband and his family. Maintenance had been awarded under the Domestic Violence Act and under Section 125 of the Code of Criminal Procedure totalling to Rs.10,000/-. The learned court took into account the educational background of the petitioner and arrived at the conclusion that Rs.15,000/- would be a reasonable

amount for maintenance of the wife and the child. The learned advocate further submits that there is no hard and fast rule that the maintenance should be one third of the income of the husband. The amount of Rs.15000/- over and above the income of the petitioner, was sufficient. The petitioner is a homoeopath doctor and a private tutor, apart from being a learned advocate.

This court finds that it has been specifically recorded by the learned court below that the wife did not have any income of her own. Thus, the husband could not prove the income of the wife, although she may have had sufficient educational qualification. Secondly, although the husband has mentioned that the wife is a homoeopath practitioner, it is an admitted position that she does not have any degree or qualification for the same. She cannot be having a regular source of income from such homoeopathic practice, which would be not authorized by law. The income from private tuition could not be proved. However, even if there is some earning from tuitions, this is not a suitable and permanent source of income which would provide any security to the petitioner and the daughter.

The petitioner has a law degree and it is informed that she had been enrolled only a month

back. It cannot be expected that she would have sufficient income from law practice at this stage. When the impugned order was passed, she was not even enrolled as an advocate.

Having considered the status of the husband as an Assistant Engineer in BHEL, this court is of the view that the petitioner and the child should enjoy the same status as the husband enjoys.

The maintenance to be paid to the wife and the child, should be based on certain parameters Such as, the status of the parties, the rental expenses which the petitioner would incur if she had a separate accommodation, cost of living, medical expenses, educational expenses and other ancillary expenses required to be incurred, in order to live a peaceful and comfortable life. The child's education, the expenses of the child for other co-curricular activities, entertainment of the child who is living with the mother, are also the relevant considerations.

Under such circumstances, this court is of the view that an amount of Rs.25,000/- per month in total, should be a reasonable amount to be paid for maintenance of the petitioner and the minor daughter which is inclusive of what has been awarded in the other proceedings. Such payment shall be made from the date of the application for

alimony pendente lite. The arrears from the date of filing of the application, upto December, 2023, shall be paid in ten equal monthly instalments, upon adjusting the amount already paid.

Maintenance for January, 2024 shall be paid within February 10, 2024 and thereafter month by month, within 10th of each succeeding month.

The instalments towards arrears shall be paid along with the current monthly maintenance. First of such instalments shall be paid with the maintenance for the month of January 2024 within February 10, 2024. Thereafter, the same shall be paid month by month, till the entire amount is liquidated.

Fraction, if any, shall be added to the last instalment.

The husband, will comply with the aforementioned directions. The matrimonial suit shall be expedited and disposed of, accordingly.

The order impugned is modified to the above extent.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)