

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1651 of 2024

With

IA NO: CAN 1 of 2024

MOLAY NASKAR

VS.

SWAGATA NASKAR NEE PAUL AND ORS.

For the Appellant	: Mr. Arka Prava Sen, Adv. Mr. Sayak Chakraborti, Adv. Mr. Sandipan Sarengi, Adv. Mr. Wrickbrata Roy, Adv. Mr. Sayantan Roy, Adv.
For the Petitioner/ Private Respondent	: Mr. Bikram Banerjee, Adv. Ms Debapriya Mitra, Adv. Ms. Saptaparni Raha, Adv.
For WBSEDCL	: Mr. Supriyo Chattopadhyay, Adv.
Hearing Concluded on	: September 05, 2024
Judgement on	: September 05, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the order dated June 20, 2024 passed in WPA 1134 of 2024.

2. Impugned order is an interim order passed in a pending writ petition, where learned Single Judge directed the employer to deduct a sum of Rs. 17,000/- per month till the order dated January 3, 2024 passed by the jurisdictional

Court remained in subsistence, from the salary of the appellant from the month of August 2024 and pay the same to the writ petitioner in her Bank Account.

3. Learned advocate appearing for the appellant submits that, the writ petitioner sought to better her case than were made out in the writ petition, through the supplementary affidavit. Moreover, he submits that facts and circumstances of the case did not warrant an interference of the Writ Court.

4. Respondents are represented.

5. The writ petition was filed by the wife. Learned Single Judge noted an order passed by the jurisdictional Court which directed, by its order dated January 3, 2024, to pay maintenance at the rate of Rs. 17,000/- per month. Such maintenance was not being paid, Writ Court passed the impugned order as an interim measure keeping in view the plight of the child born out of the wedlock as also the order of the jurisdictional Court relating to maintenance.

6. We find no perversity in the impugned order warranting an interference of an appeal Court in an intra-court appeal.

7. Appellant and the writ petitioner/private respondent are married with their marriage being registered under the Special Marriage Act, 1955 on February 14, 2013. A female child was born to the couple on April 23, 2015. Appellant filed a matrimonial suit being MAT 25 of 2016 in the court of the Learned District Judge, Alipore for dissolution of marriage under section 27 of the Special Marriage Act, 1955. Private respondent filed an application under section 36 of the Special Marriage Act, 1955 in such proceeding for grant of alimony pendente lite.

8. Private respondent complained to the police on December 9, 2015 as against the appellant. Police not acting on such complaint, private respondent filed proceedings before the Additional Chief Judicial Magistrate, Baruipur pursuant to whose direction, a First Information Report being Sonarpore Police Station Case No. 2113 dated December 29, 2015 under sections 498A/406/34 of the Indian Penal Code, 1860 and 3/4 of the D.V Act was registered. Private respondent also filed an application under the Protection of Women from Domestic Violence Act, 2005 against the appellant and his family members being MC No. 96 of 2016 in which an order dated August 30, 2018 was passed directing

the appellant to arrange an alternative accommodation of the same level as him for the private respondent and their child and till the same was made available, directed the appellant to pay Rs. 8000/- per month as rent for alternative accommodation.

9. Appellant preferred an appeal against the order dated August 30, 2018 which was dismissed on February 4, 2022. Subsequently, the proceeding MC No. 96 of 2016 was dismissed for non-prosecution. An application for restoration was filed which was allowed on December 12, 2023. Private respondent also filed an application under section 125 of the Code of Criminal Procedure being Misc. Case No. 116 of 2019 which was dismissed for default on December 1, 2021.

10. Private respondent approached the High Court under Article 226 of the Constitution of India seeking a direction upon the employer of the appellant to pay the maintenance directed by a court of law from out of the salary receivable by the appellant. In such writ petition, private respondent pleaded about the matrimonial disputes and the pending proceedings relating thereto. Private respondent also placed on record the medical condition of the child and the requirement of medical treatment.

11. During the pendency of the writ petition, the application for maintenance filed under section 36 of the Special Marriage Act, 1955 was disposed of on January 3, 2024 by directing the appellant to pay maintenance pendente lite at the rate of Rs. 17,000/- per month from the date of filing of the application under section 36 of the Special Marriage Act, 1955.

12. Private respondent filed a supplementary affidavit in the pending writ petition bringing on record the order dated January 3, 2024 passed in the application for maintenance.

13. A writ petitioner and for that matter any party to a writ petition can bring to the notice of the Court, events happening subsequent to the filing of the writ petition so that the Court is in a position to grant such relief as the parties are entitled to. It is for the Court in seisin of the proceeding to consider and adjudicate on the relevancy of the records made available to it in order to decide the issues.

14. Materials that the private respondent brought on record in the writ petition are in respect of events happening subsequent to the filing of the writ petition. Such materials are relevant to the issues in the pending writ petition. In the

facts and circumstances of the present case, it cannot be said that, writ petitioner was bettering her case than made out in the writ petition by bringing on record the relevant subsequent events. It also cannot be said that the writ court acted without jurisdiction in passing the impugned order. Discretion exercised by the learned Single Judge cannot be said to be perverse.

15. In the facts and circumstances of the present case, learned Single Judge noted the existence of matrimonial disputes between the private parties, the plight of the child born out of wedlock and being the unfortunate victim of the acrimonious litigations between the private parties, proceeded to direct the employer of the appellant to pay the maintenance as directed by the jurisdictional court, during the subsistence of such order.

16. Learned Single Judge exercised discretion in granting the interim relief. Interim relief granted is in the best interest of the child. Learned Single Judge considered every aspect of the matter in the detailed impugned order. Learned Single Judge held that, although a writ court may not be called upon to execute an order passed for payment of maintenance, nonetheless, taking into consideration the welfare of the child

and the right of such child guaranteed under the Constitution, interim measures can be granted.

17. Appellant is indulging in unnecessary litigation. Funds available with the appellant should be protected in order to provide for the child born out of the wedlock. Moreso, the child is need of constant medical care as appearing from the pleadings and annexures to the writ petition.

18. In such circumstances, dismissing the appeal will not subserve the interest of the child or of justice. Appellant should be put on terms. Some financial security needs to be put in place for the medical expenditure of the child as also her welfare. Appeal is therefore dismissed with costs assessed at of Rs. 10,00,000/- to be paid by the appellant to the writ petitioner/private respondent within seven(7) days from date. Appellant will deposit documentary evidence of payment of such costs with his employer. In default of such deposit, employer of the appellant will deduct such costs from out of the entitlements of the appellant and pay the same to the writ petitioner/private respondent within 10 days from date. Employer is at liberty to adjust/encash all benefits that the appellant is entitled to such as leave case benefits, to comply with this order.

19. Upon receipt of such cost of Rs. 10,00,000/- the writ petitioner/private respondent will open an interest bearing fixed deposit account in the name of the child in which she will be the guardian, in any nationalized bank of her choice, and keep such fixed deposit renewed until further orders in the writ petition. Interest accrued on such fixed deposit be credited monthly in the savings bank account of the child which the writ petitioner/private respondent will open in the joint names of the child and her. Interest so credited in the savings bank account be utilised for the medical treatment of the child as also her necessities.

20. MAT 1651 of 2024 along with connected application are accordingly **dismissed**.

[DEBANGSU BASAK, J.]

21. I agree.

[MD. SHABBAR RASHIDI, J.]

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