

Item No. 4
28.02.2024
Court. No. 19
GB

C.O. 2971 of 2023
With
CAN 1 of 2023

Sri Tarapada Mandal
Vs.
Smt. Tarunita Mandal

*Mr. Rajdeep Bhattacharya,
Mr. Souvik Maji,
Mr. Arpayan Mukherjee,
Mr. Kaustav Seal*

...for the Petitioner.

Ms. M. Maity

...for the Opposite Party.

1. The revisional application arises out of an order dated September 15, 2022, passed by the learned Additional District Judge, Fast Track 1st Court at Paschim Medinipur in Judicial Misc. Case No.03 of 2022. J. Misc. Case No.03 of 2022 was filed in connection with Matrimonial Suit No.621 of 2013.
2. By the order impugned, the learned court dismissed the matrimonial suit as withdrawn, but directed permanent alimony of Rs.10,500/- to be paid per month. The petitioner/husband has challenged the said order on the grounds that once the matrimonial suit was withdrawn, direction for payment of permanent alimony at a particular rate, to be paid on a monthly basis, was misconceived. The order is erroneous. Without a decree for divorce, permanent alimony cannot be granted.

3. The learned advocate for the wife submits that the maintenance pendente lite of Rs.7,000/- was being paid by the husband until the suit was withdrawn. Under such circumstances, the wife and the child would be left in a vagrant condition, as they do not have any means of sustenance. Considerable amount of money is spent for the education of the child, who is around 15 years of old. As soon as the application was filed for enhancement of the maintenance pendente lite, the petitioner withdrew the suit only to deprive the right of the wife and child to claim maintenance under the provisions of law.
4. This Court agrees with the agony of the wife who has been dragged to court to contest the matrimonial suit from 2013. The husband had filed the application for withdrawal in 2022, which means that the wife was forced to contest the suit for nine years. For such effort, apart from the social stigma which is attached to a litigation of such nature, there is also drainage of emotions and finances. In an Indian society, for a middle class woman to be slapped with a matrimonial suit itself, has a huge ramification, especially when the wife is not an independent person, having her own source of income. She is either dependent on her father or brothers. Such dependence often fetches disrespect and neglect.
5. Under such circumstances, this Court is of the view that withdrawal of the suit after ten years from its

filing and after having dragged the wife and the child to court, cannot be allowed to be withdrawn, without the petitioner paying some cost to the wife and the child. When the husband filed the matrimonial suit, the wife acquired a right under the law to pray for maintenance for herself and the child. By withdrawing the suit, the right which had accrued in favour of the wife, has been denied. She does not enjoy any maintenance from any other proceeding. If the suit continued, monthly maintenance would be paid. Now, the wife does not have that avenue open.

6. Under such circumstances, this Court is of the view that although the order impugned deserves to be set aside, the wife should be paid cost for the mental agony and the social and economic deprivation caused, and the stigma with which she lived for long 10 years. A sum of Rs.2,00,000/- shall be paid to the wife on account of cost for herself and the child by the petitioner, in four equal monthly instalments. First of such instalment shall be paid within March 5, 2024, thereafter month by month within 5th of each succeeding month, till the amount is liquidated.
7. It is submitted that the wife is not allowing the child to meet the father although there have been orders in different proceedings. This Court directs that the petitioner will be allowed to meet the child at 'Samrat' restaurant in Midnapore town on every alternate Sunday between 3.30 to 5.30 p.m. The son will be

accompanied by the mother and a learned advocate during such visit. The father and the child will interact independently. The mother shall wait in a nearby seat with the learned advocate. The petitioner will behave himself and cooperate as it is informed that he had verbally abused the wife and her parents on earlier occasions. This arrangement will be subject to any other that may be passed by a competent forum.

8. This order shall not affect any other proceeding before any other court of law initiated by either of the parties, for any relief whatsoever.
9. Accordingly, the revisional application is disposed of.
10. With the disposal of the revisional application, CAN 1 of 2023 is also disposed of. The order impugned is set aside.
11. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)