

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:
Hon'ble Justice Shampa Sarkar

C.O. 3000 of 2023

Ajoy Kumar Sahoo
Vs.
Swagata Sahoo

For the petitioner : Mr. Bikash Ranjan Bhattacharya, Sr. Advocate
Mr. Tanmoy Chatterjee,
Mr. Debajyoti Deb,
Mr. Somdyuti Parekh

For the opposite party : Mr. Amitabha Ghosh,
Mr. Madan Mohan Ray,

Hearing concluded on: 14.03.2024

Judgment on: 12.04.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated July 18, 2023, passed by the learned Additional District Judge, 1st Court at Contai, Purba Medinipur, in J. Misc. Case No.62 of 2022. The J. Misc. Case arose out of Matrimonial Suit No.649 of 2022.

2. By the order impugned, the learned court disposed of the application under Section 24 of the Hindu Marriage Act, 1955 and directed the petitioner/husband to pay Rs.1 lakh per month as maintenance pendente lite from the date of filing of the application till the date of disposal of the matrimonial proceedings. The amount was directed to be transmitted directly to the bank account of the opposite party/wife. The opposite

party/wife was directed to open such account and intimate the details to the petitioner/husband through her learned Advocate within a period of 10 days from the date of the order. The amount was directed to be paid within 10th of each month for which the same fell due, with effect from the month of August, 2023. The arrear maintenance from the date of filing of the application till July 2023, was directed to be deposited in the bank account of the opposite party/wife in 12 equal monthly instalments along with the current maintenance on and from August 2023. The school fees of the child on and from the next academic session was further directed to be paid. The amount of litigation cost to the tune of Rs.50,000/- was also directed to be deposited in the bank account of the opposite party/wife in five equal monthly instalments along with current maintenance.

3. Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate for the petitioner/husband had assailed the order on the following grounds :-

(A) The learned court failed to take into consideration the income tax return of the husband and the income disclosed therein.

(B) The amount of maintenance awarded was disproportionately high.

(C) The income of the wife was not considered.

(E) The break-up of the expenses of the child and the wife had not been indicated.

(F) Apart from a direction to pay Rs.1 lakh, further direction to pay all the school fees etc., was not only exorbitant but unreasonable.

(G) The learned court miscalculated the expected monthly expenses of the child, who was a student of class-V.

(H) The requirement of the opposite party to enable her to maintain a decent life was over emphasized.

(I) The evidence on record would clearly indicate that the income of the petitioner/husband would not justify the payment Rs.1 lakh per month as maintenance pendente lite.

(J) The learned court erred in holding that the income tax return did not disclose the actual income of the husband.

(K) The court proceeded on surmise and conjecture and there was no evidence to justify the findings in respect to the petitioner's income.

(L) If the learned court was of the view that Rs.1 lakh would be a substantial amount for the wife and the child, the direction to pay the amount and further direction to pay additional school expenses and tuition fees without quantifying the same, were contrary to the observation of the learned court.

(M) The learned court assumed that as the company of the petitioner had an annual turnover of Rs.1.5 crores, the financial position of the petitioner was strong enough to pay such an inflated amount as maintenance pendente lite.

(N) That the development business of the petitioner was not the sole proprietorship of the petitioner, but a family business and the brothers of the petitioners also had a substantial share in the income.

(O) The learned court ought to have allowed adjustment of the amount which had already been paid towards the educational expenses of the child as tuition fees and session fees etc. Although, the learned court relied heavily on the social status of the parties and held that determination of the quantum of maintenance pendente lite should be at par with the standard of living of the parties enjoyed before their estrangement, Rs.1 lakh would not be required by the wife to reside in a small town.

(P) If the guiding principle in awarding maintenance as recorded by the learned court was to ensure a reasonable and comfortable life for the wife and the child, the amount of Rs.1 lakh per month was excessive.

(Q) The conclusion that the income of the husband was Rs.15 lakh per mensem had been arrived at by the learned court without referring to any document or evidence.

(R) Although, the learned court had recorded that in the affidavit of assets and liabilities, the wife/opposite had not mentioned about the income of the husband/petitioner and could not show any document to justify the monthly income of the husband/petitioner to be even close to the amount claimed by her, the learned court proceeded on an assumption that a chartered accountant by profession, who also owned a family business, should pay Rs.1 lakh and such quantum of maintenance would be just and proper. All conclusions of the learned court were based on personal assessment, which were not backed by any supporting evidence. They were based on emotion.

(S) The learned court presumed that as the petitioner was a chartered accountant and had his own firm and also paid salaries to

the tune of Rs.24,000/- to Rs.30,000/- per month to the staff, the income was much higher than the disclosed income in the tax return.

(T) The learned court had wrongly held that it was 'indigestible' to accept that a chartered accountant who had his own firm and spent more than Rs.30,000/- per month toward salary of the staff, could run an establishment with an annual income of Rs.36,396/-.

(U) The learned court went into a fanciful and imaginary calculation of the income of the husband, inter alia, holding that from the expenses incurred in running the proprietorship firm, the minimum income would be Rs.1 lakh per month or else Rs.30,000/- towards salary of the staff was not affordable.

(V) The learned court further went into a calculation of the income from the family business as Rs.36 lakhs per annum, based on the annual turn-over. Such annual turn-over would not indicate the amount which each of the share-holders of the company were taking back as income from the said business.

(W) With regard to the income of the wife, the learned court again assumed that although she was a well-educated person and had a LL.B degree, she was not in a position to earn any money.

(X) The learned court did not take into consideration the income of the wife from the sari business.

4. Thus, Mr. Bhattacharya submitted that the learned trial judge had proceeded on mere surmise and conjecture and arrived at an exorbitant amount as maintenance pendente lite, without considering the basic principles governing quantification of the same. The reasons supplied by the learned trial judge were based on certain presumptions with regard to the husband's income, status etc., which were beyond the evidence on record. The learned trial judge had failed to differentiate between the concept of annual turn-over and the net profit from the family business. The order impugned was perverse.

5. Mr. Amitabha Ghosh, learned Advocate appearing on behalf of the opposite party/wife, submitted that the husband/petitioner had suppressed his income from the income tax authorities. To substantiate such

contention, Mr. Ghosh, had drawn the attention of the court to the cross-examination of the petitioner/husband. This court finds that in the cross-examination the petitioner/husband had admitted that in the year 2005, he had opened a partnership firm, namely, Biswas Mustafa and Sahoo. Since 2013, he ceased to be a partner. The partnership firm was still in existence. The petitioner/husband had received his proportionate share from the said partnership firm, but he did not remember the amount. In the income tax return for the year 2011-12, the fact that the petitioner/husband was a partner of the firm, was available. The petitioner/husband further deposed that computation of his total income was not mentioned in his I.T. return. It was a fact that income from other sources was not reflected in the I.T. return. The petitioner/husband started his own practice sometime in 2012-13 and he had his own firm namely, A. K. Sahoo and Associates. The office of the said firm was situated at his own purchased property and he had two staffs. The petitioner used to pay Rs.24,000/- to Rs.30,000/- per month to the staff of the said firm, as salary. The petitioner deposed that the income disclosed in the income tax return was only from the firm, but the income from the construction business, that is, Shree Radha Devcon Pvt. Ltd., had not been disclosed in the I.T. return. The petitioner/husband and his two brothers were the directors of the company. The company employed three regular persons in the company and depending on the pressure of work, the company used to engage other persons on casual basis. A different set of auditors used to deal with the accounts of the company and submit the I.T. returns. The company had other share-holders, who were primarily family members. The annul turn over for the preceding year was 1.5 crores from

the said business. The petitioner/husband was an authorized signatory in the company's business. The petitioner/husband was residing at 9/A Ekdalia Place, which belonged to the company. After marriage, the petitioner/husband started residing with the opposite party/wife at 8/4B/2 Ballygunge Station Road and also at Contai, in a rented accommodation. The petitioner/husband had 50% share in the house at Ballygunge Station Road. The daughter used to study at Mahadebi Birla Sishu Bihar. The petitioner/husband also admitted in the cross-examination that the details of the fixed deposits had not been mentioned in the affidavit of assets and the income tax certificate was issued only on the basis of the disclosed income. Although, there were statements in the pleadings that the wife had a substantial income of Rs.11lakh per month from a saree business, the husband had categorically deposed that he could not file any document to show that his wife had a running saree business.

6. Referring to the cross-examination of the wife/opposite party, Mr. Ghosh further pointed out that Mousahooshop was an online business, which was operational till 2017. All the transactions of the business took place from the bank account of the wife of Krishna Kamal Nandi, an employee of the petitioner/husband. During the online business of sarees, she earned around Rs.20,000/- to Rs.30,000/- per month.

7. This court is required to decide the justification of the amount awarded by the learned court as maintenance pendente lite.

8. At serial No.30 of the affidavit of asset filed by the opposite party, the husband's assets have been mentioned. The details of the expenditure on the child has been mentioned as around Rs.33,000/- per month which

included the yearly school fees, the expenses at the daycare, books, private tuitions, allowances and expenses towards sports, outdoor activities, camps etc. With regard to the statement of expenses of the wife, transport cost, medical expenditure, entertainment, litigation costs, miscellaneous expenses, pocket money etc., were calculated at Rs.60,000/-.

9. I find from such quantifications that there are some common heads, both in respect of the expenses of the child and the expenses of the opposite party/wife. Certain heads like entertainment/miscellaneous/other expenses/allowance, pocket money etc., overlap. However, the deposition of the husband clearly indicates that his income from other sources was not disclosed in the I.T. return of the firm. His total personal income from all other sources has not been disclosed. The fact that he is a director of a company which was engaged in development business and had an annual turnover of 1.5 corers, was a legitimate consideration for the learned trial judge to arrive at the expected income of the husband. It was for the husband to prove his income. He had failed to do. The tenor of his deposition indicates that income from other sources had been suppressed. Moreover, the petitioner/husband also failed to substantiate with cogent evidence that the wife had an independent source of income.

10. The Hon'ble Apex Court held in various decisions that it was for the husband to prove his income. It was for the husband to substantiate that his income was not sufficient to provide the maintenance as claimed by the wife in her application under Section 24 of the Hindu Marriage Act. If he failed to do so, then adverse inference should be drawn.

11. On the other hand, the wife/opposite party deposed that she used to have an online saree business which continued till 2017. The monetary transactions in respect of such business was through the bank account of the wife of an employee of the petitioner/husband. This indicates that the business was either controlled by the petitioner/husband or his associates. There is no contrary evidence to rebut such statement of the wife.

12. The saree business was an online business. Had the same been operational, adequate information would be available online. It would not be difficult for the husband to prove that the wife was running such business. The husband categorically expressed his inability to prove such income. The earning potential of the wife and her degrees should not also be a factor to be considered while awarding maintenance.

13. It was incumbent upon the petitioner as an income tax assessee to disclose his income from all sources. The husband did not disclose his actual income. There is an admission in this regard in the cross-examination. Secondly, in the affidavit of assets, the husband was required to disclose what was his actual income, which was not done. The law required that income was to be proved by the husband as he was in exclusive knowledge of the same.

14. Although, Mr. Bhattacharya wanted to press a point with regard to the development business being a family business and having 12 share-holders, with the petitioner/husband as a non-remunerative director, there is no evidence to that effect either in the examination in chief or in the cross-examination. The deposition of husband/petitioner, is silent in this regard.

15. This court does not accept the petitioner's contention that the learned trial judge had based the entire order on hypothetical considerations. The learned court took into account the pleadings, the evidence of the parties, the disclosures in the affidavit of assets and liabilities, while arriving at the findings. This court also cannot agree that the reasons supplied by the learned trial judge were malafide and perverse. The learned trial judge has assigned detailed reasons to substantiate the finding that the petitioner had failed to disclose his actual income.

16. This court need not go into any intricate calculation like an auditor, with regard to gross income, net income, profitable income etc., because the parameters to be considered for grant of maintenance pendente lite are different. As has been laid down in several decisions of the Hon'ble Apex Court. They are, (a) income of the husband, (b) expenses of the husband, (c) whether the wife had an independent source of income, (d) expenses for the child including food, clothing, shelter, education, medicines and other miscellaneous expenses required for a child to have a healthy and happy life, (e) expenses of the wife with regard to food, clothing, shelter etc., (f) the expected cost of living, (g) standard of living of the parties.

17. While discussing the judicial precedents on the point of maintenance, the Apex Court in ***Rajnish v. Neha and ors. reported in (2021) 2 SCC 324*** discussed the various criteria for determining the quantum of maintenance and the relevant factors to be taken into consideration in order to quantify the amount. The object behind granting maintenance was to ensure that the dependent spouse was not reduced to destitution or vagrancy on account of failure of the marriage. Yet, an excessive and unreasonable amount could

not be imposed as a punishment upon the other spouse. While discussing a decision of the Delhi High Court, the Apex Court also approved the factors to be relevant. Such finding of the Apex Court is at paragraph 57 of the judgment. The relevant paragraph is quoted below:-

“(v) The Delhi High Court in *Bharat Hedge v Smt. Saroj Hegde* laid down the following factors to be considered for determining maintenance :

1. Status of the parties.
 2. Reasonable wants of the claimant.
 3. The independent income and property of the claimant.
 4. The number of persons, the non-applicant has to maintain.
 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
 6. Non-applicant’s liabilities, if any.
 7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
 8. Payment capacity of the non-applicant.
 9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
 10. The non-applicant to defray the cost of litigation.
 11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act. 17.
- (vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.”

18. In the celebrated judgment of Justice Krishna Iyer in the matter of ***Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and ors.*** reported in **(1978) 4 SCC 70**, the object behind promulgation of maintenance laws, had been discussed, which is quoted below:-

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that Sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker Sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts.”

19. In **Rajnesh (supra)** it was held that even if the wife had some income, the same would not be a ground for reducing the maintenance determined to be payable by the husband. The relevant paragraphs are set out below:-

“62. The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

63. In *Shailja & Anr. v Khobbanna*, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home.⁴⁰ Sustenance does not mean, and cannot be allowed to mean mere survival.

64. In *Sunita Kachwaha & Ors. v Anil Kachwaha* the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

65. The Bombay High Court in *Sanjay Damodar Kale v Kalyani Sanjay Kale* while relying upon the judgment in *Sunita Kachwaha (supra)*, held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

66. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a *Chander Prakash Bodhraj v. Shila Rani Chander Prakash*. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.”

20. Taking note of the trend of the cross-examination, depositions and the nature of business which the husband owned with his brothers, the learned court concluded that Rs.1 lakh would be a reasonable amount. The evidence discloses that the husband’s income was considerably high and apart from his earnings as a chartered accountant, he was a director of a family owned business which had an annual turnover of 1.5 crores. The findings of the

learned Court and reasonableness of the same are not subject to interference by this Court. The only point for decision here is the justification of the quantum awarded. The husband could not be saddled with an amount which was either unreasonable or excessive.

21. The learned court rightly held that the husband/petitioner had a higher income than what was disclosed and the wife did not have any income of her own. The court rightly held that the maintenance must commensurate with the status of the parties which they were enjoying prior to their separation. They were living at Ballygung, Kolkata, a posh and expensive locality and the child was studying in an elite school. These two findings of the court are based on cogent evidence. The question is whether the learned court had quantified an amount which was either exorbitant or beyond what was required for a comfortable life of the wife and the child. The wife had already quantified the expenses of the child at page 4 of the affidavit of assets which is at page 60 of the revisional application. According to the wife, Rs.33,000/- per month, inclusive of all expenses for the child was adequate.

22. Under such circumstances, this court directs that Rs.33,000/- per months should be paid to the child towards all her expenses inclusive of her school fees, her tuition fees and all other heads which have been elaborately enumerated under different heads at serial no.38 of the affidavit. A further direction by the Court to pay the session fee and tuition fee was not justified.

23. What should be the maintenance for the wife is next decided. It appears that she resides at Contai. Her claim has been divided into various

categories, namely, medical expenses, transport, pocket money, miscellaneous and other expenses, which are elaborated at page 62, serial nos.46 to 53 of the expenditure statement.

24. As already discussed, some of the heads are common, for example, miscellaneous/pocket money/other expenses which have been quantified as Rs.5,000/-, Rs.5000/- and Rs.15,000/-. They appear to be one and the same. Apart from the above, the wife had also calculated Rs.5000/- per month towards entertainment and recreation.

25. In this case, as the wife has not claimed any money towards housing cost, the court did not take into account such parameter while fixing the quantum.

26. This court, upon analyzing various decisions of the Hon'ble Apex Court and the High Courts with regard to the fixation of the quantum of maintenance for the wife, her expected expenses for food, clothing, entertainment etc., holds that Rs.45,000/- per month would be justified. Thus, the Court awards Rs.45,000/- per month to the wife and Rs.33,000/- per month for the child, till disposal of the suit.

27. Thus, the husband/petitioner is directed to pay Rs.45,000/- per month as maintenance pendente lite to the wife and Rs.33,000/- per month as maintenance pendente lite to the child from the date of application, till the disposal of the suit.

28. First of such payment shall commence from May, 2024, and shall be made within May 15, 2024, thereafter, month by month within 15th of the each month, when it falls due.

29. The mode of payment as directed by the trial court shall be final.

30. Litigation cost as directed by the court shall be paid in the five instalments along with monthly maintenance. First of such instalment will be from May, 2024. If the litigation cost or part thereof has been paid, the same shall be adjusted.

31. The arrears from the date of filing of the application till April 2024, shall be paid in 15 equal monthly instalments and first of such instalment shall accompany the maintenance for the month of May 2024 and shall continue every month, till the entire amount is liquidated.

32. The revisional application is disposed of.

33. The order impugned is modified, accordingly.

34. Parties are to act on the basis of the sever copy of this order.

(Shampa Sarkar, J.)