

S/L 28
16.05.2024
Court. No. 551
Sourav

CO 3032 of 2023

**Sri Tapas Ghosh
Vs.
Smt Supriti Ghosh**

*Mr. Rabindra Narayan Dutta
Mr. Sibashis Ghosh
Mr. Arkoday Mukherjee
Mr. Ankit Dhara*

...for the petitioner.

*Mr. Shourjyo Mukherjee
Mr. Vishwarup Acharyya
Mr. Akash Dutta*

...for the opposite party.

1. Two affidavits-of-service and the supplementary affidavit on behalf of the petitioner/husband as filed in Court today are taken on record.
2. Heard learned advocate for the parties.
3. In this revisional application, the order no. 18 dated 17.05.2023 and order no. 20 dated 17.08.2023 as passed in Misc. Case No. 371 of 2022 (arising out of an application under Section 24 of Hindu Marriage Act) passed by the learned Additional District Judge, 6th Court at Alipore, South 24 Parganas have been impugned by the husband who is the petitioner in Matrimonial Suit No. 1180 of 2021 and the opposite party in Misc. Case no. 371 of 2022.
4. At the time of hearing, learned advocate appearing on behalf of the husband/petitioner herein submits before this Court that though as per direction of the Hon'ble Apex Court in the case of **Rajnish Vs. Neha** both the

parties to the said Misc. Case have filed their respective affidavits as to assets and income but the opposite party/wife herein with some ulterior motive had not disclosed her actual income arising from a business as owned by her.

5. It is further submitted on behalf of the husband/petitioner herein that such fact was brought to the notice of the learned trial Court on 17.05.2023 which is why an order was passed by the trial Court vide order dated 17.05.2023 for filing documents by the parties as last chance on the adjourned date i.e., on 17.08.2023.
6. It is further argued on behalf of the petitioner/husband that on the adjourned date i.e., on 17.08.2023, the opposite party/wife herein though filed some documents but she contended before the trial Court that no such business exists as contended on behalf of the husband.
7. It is thus argued by learned advocate for the petitioner/husband herein that in absence of any positive finding, with regard to the contention of the wife/opposite party herein, learned trial Court is not supposed to ask the petitioner/husband herein to go on paying Rs. 25,000/- per month towards *ad hoc* payment of maintenance.
8. While opposing the prayer, learned advocate for the opposite party/wife herein submits before this Court that pursuant to the direction of the trial Court documents have been filed by the wife showing that the opposite party/wife had no business as wrongly alleged on

17.08.2023 and further materials have been filed to substantiate that the amount lying in the account of the wife/opposite party herein is a meager one.

9. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that a dispute arose between the husband/petitioner and the wife/opposite party herein with regard to the existence of a business in the name of the wife/opposite party herein and further the wife /opposite party herein has at all filed her correct affidavit of assets and income.
10. In considered view of this Court, the disputes which have been raised before the trial Court as well as at the time of hearing of the instant revisional application are all factual disputes which are required to be adjudicated by the learned trial Court preferably not by exchange of affidavits but by trial on evidence.
11. However, it does not appear to this Court that the learned trial Court has committed any wrong in directing the husband/petitioner herein to go on paying *ad hoc* amount of maintenance month by month, since, it is not the intention of the legislature while enacting Hindu Marriage Act that a wife is not entitled to interim maintenance during the pendency of a divorce proceeding.
12. In view of the discussion made hereinabove, this Court while disposing the instant revisional application, directs the learned trial Court to dispose of the Misc. Case No.

371 of 2022 by trial on evidence in *de die in diem* manner and shall come to a logical conclusion thereof within three months from the date of communication of this order.

13. It is further ordered that till disposal of the Misc. Case No. 371 of 2022, the petitioner/husband herein shall go on paying Rs. 15,000/- per month, month by month which is to be paid by the 7th day of each succeeding month for which it becomes due. It is further ordered that the opposite party/wife herein prior to commencement of hearing of the Misc. Case No. 371 of 2022 is at liberty to file her supplementary affidavit and/or written objection to the supplementary affidavit as filed by the petitioner/husband before the trial Court if not filed in the meantime.
14. In view of the observation made hereinabove, the instant revisional application being **CO 3032 of 2023** is disposed of.
15. Both the parties as well as the learned trial Court are directed to act on the server copy of this order.
16. It is reported at the Bar that the Court of Additional District Judge, 6th Court at Alipore is at present lying vacant. In view of such, this Court in exercise of its plenary power directs that case records of both the Matrimonial Suit No. 1180 of 2021 and Misc. Case No. 371 of 2022 shall be withdrawn by the learned District Judge, Alipore, South 24 Parganas from the file of the Court of Additional District Judge, 6th Court at Alipore

and those two case records are to be placed in the file of any Additional District Judge of Alipore, South 24 Parganas which the learned District Judge, Alipore may deem fit and proper but preferably not to the Court of the Additional District and Sessions Judge, Alipore who are dealing with NDPS matters, POCSO matters and/or having determination for trial of special cases.

17. Department is directed to forward a copy of this order to the learned District Judge, Alipore, South 24 Parganas forthwith.
18. Both the parties and the learned District Judge, Alipore, South 24 Parganas are directed to act on the server copy of this order.
19. Liberty is also given to the parties to the instant *lis* to bring to the notice of the learned District Judge, Alipore regarding today's order if they are so advised.
20. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)