

Item No.3
08.02.2024
Court. No. 19
GB

C.O.3342 of 2023

Sri Ratan Rathi
VS
Jyoti Rathi @ Usha Rathi

Mr. Tanmoy Mukherjee,
Mr. K.R. Ahmed,
Mr. Rudranil Das

...for the Petitioner.

Mr. Meghnath Dutta,
Mr. S. Rudra

...for the Opposite Party.

1. The revisional application arises out of an order dated September 27, 2022, passed by the learned Additional District Judge, Fast Track, 2nd Court at Howrah in Misc. Case No.31 of 2020. The misc. case arose out of Matrimonial Suit No.174 of 2019.
2. The opposite party/wife prayed for maintenance under the provisions of Section 24 of the Hindu Marriage Act. The application was disposed of by the learned court, inter alia, directing the husband/petitioner to pay Rs.8,000/- per month for the wife and Rs.10,000/- for the daughter, towards monthly maintenance, in addition to the amount already awarded under the provisions of Protection of Women from Domestic Violence Act, 2005. Further litigation cost of Rs.10,000/- was directed to be also paid.
3. The said order has been challenged in this revisional application, on the following grounds:-

a) The learned court did not call upon the parties to file their affidavit of assets and liabilities, in order to ascertain the financial condition of the parties.

b) The learned court, without coming to any finding with regard to the income of the husband, directed such amount to be paid on the ground that husband was a 'able bodied person' and was bound to maintain his wife and child.

c) The amount awarded was over and above what was directed in the proceeding under the Domestic Violence Act, although the Hon'ble Apex Court had categorically laid down the law that quantum of maintenance should be the highest amount awarded in any of the proceedings which may be carried by the wife, seeking maintenance under the different laws.

4. This revisional application was entertained by this court, with certain conditions.
5. The husband was directed to pay Rs.3,00,000/- towards arrear maintenance along with litigation cost of Rs.10,000/-. Such payment was made as per submissions of the learned advocates. This Court had further directed that an amount of Rs.12,500/- should be continued to be paid as directed in the Domestic Violence proceeding. The payment shall be made in the same manner as had so far been made.

6. According to Mr. Mukherjee, learned advocate for the petitioner, the current payment was made in the learned court below from the date of the order, i.e., October 11, 2023 till February 2024. Mr. Mukherjee submits that as this Court had directed that the amount should be paid as directed in the Domestic Violence proceeding, the petitioner was of the impression that the mode of payment would be the same as directed by the learned Magistrate and accordingly, the money was deposited in the domestic violence case. It is also submitted that the opposite party has already prayed for withdrawal of the said amount.
7. Mr. Dutta, learned advocate appearing on behalf of the wife submits that the amount of Rs.3,10,000/- and Rs.10,000/- was paid by demand draft but, the amount as directed by the learned Magistrate, was not liquidated and the order of this Court stands violated. There are arrear dues.
8. According to the order dated October 11, 2023, this Court had directed that in case of default, the revisional application will stand dismissed. However, the payment as directed by this Court has been made. Instead of the amount of Rs.12,500/- being paid to the wife directly, the same amount for five months was deposited in the court on the understanding that this Court had directed that such deposit would be made as directed in the domestic violence proceeding.

9. Under such circumstances, I find substantial compliance with the order of this court. The contention of Mr. Dutta that the arrears as payable under the domestic violence proceeding should also have been paid, is not correct. The opposite party is at liberty to proceed before the appropriate forum for execution of the order of the learned Magistrate passed in the application under Protection of Women from Domestic Violence Act, 2005, as per law.
10. This revisional application is with regard to the adjudication of the correctness of the order of maintenance passed by the learned court. As has already been mentioned hereinabove, this Court finds that the learned trial judge had not taken into consideration the income of the husband, expenditure of the husband, status of the parties and the expected expenses of the wife and the child. It is contended that an opportunity was given to the husband to file the affidavit of assets, but the same was not filed. In order to dispel any doubt with regard to the procedural irregularities, this court is of the view that a fresh opportunity should be given to both the parties to file their affidavit of assets and liabilities and further opportunity should also be given to the parties to adduce oral and documentary evidence in support of their case and counter-case, in this regard. The order impugned stands set aside.

11. The revisional application is, thus, disposed of with the following orders:-

A) A further sum of Rs.1,00,000/- shall be paid to the wife within two weeks from date.

B) A sum of Rs.13,000/- shall be remitted to the bank account of the wife as monthly current maintenance. Such bank details shall be provided to the learned advocate on record of the petitioner, within this week.

C) Such payment shall continue as current maintenance in total, inclusive of the amount directed under the Domestic Violence Act, from the month March, 2024.

D) Payment for the month of March 2024 shall be made within April 10, 2024 and thereafter month by month within 10th of every succeeding month. All payments and acceptance shall be without prejudice to the rights and contentions of the parties.

E) The application for maintenance, i.e., Misc. Case No.31 of 2020 shall be heard and disposed of afresh, upon allowing the parties to file their Affidavit of Assets and Liabilities and also adduce evidence.

12. This order shall not prevent the wife from proceeding under the Domestic Violence Act, for arrear maintenance, which shall be decided in accordance with law. Of course, the husband will be entitled to

adjustment of the amount which has already been paid as per the direction of this Court.

13. The payment will continue as directed hereinabove, in respect of current maintenance, till the application under Section 24 of the Hindu Marriage Act is disposed by the learned court below. Needless to mention, the learned court shall dispose of the said application within a period of three months from the date of communication of this order. Till the disposal of the application under Section 24 of the Hindu Marriage Act, the execution case shall remain stayed, provided this order of payment is complied with. Thereafter, the wife will be entitled to pursue her remedy, if the order to be passed by the learned court, is not complied with in future.
14. Accordingly, the revisional application is disposed of.
15. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)