

23.02.2024
Sl. No.9(DL)
srm

C.O. No. 3442 of 2023

Narayan Saha

Versus

Smt. Dipika Saha & Anr.

Mr. Subhadeep Chatterjee,
Ms. Arpita Kundu

...for the Petitioner.

Mr. Subhajit Chowdhury

...for the Opposite Party No.1.

1. The revisional application arises out of an order dated June 23, 2023 passed by the learned Additional District Judge, Fast Track, 2nd Court at Barrackpore, North 24-Parganas, in Mat Suit No.299 of 2021.
2. By the order impugned, an application under Section 24 of the Hindu Marriage Act was disposed of allowing maintenance *pendente lite* of Rs.12,000/- per month in total, both for the wife and the child. Litigation cost of Rs.10,000/- was also imposed.
3. The learned Advocate for the petitioner submits that the order does not reflect the basic parameters on the basis of which the learned court arrived at the finding that maintenance *pendente lite* of Rs.5,000/- per month for the wife and Rs.7,000/- per month for

the child would be reasonable and sufficient. It is further stated that the husband's income was not taken into consideration. Affidavits of assets and liabilities filed by the parties were not looked into. The court also recorded that the wife could not file any document in support of her claim that the husband earns Rs.1,00,000/- per month.

4. The learned Advocate for the wife submits that the husband has other income and as such he earns around Rs.1,00,000/- per month. Rs.12,000/- for the wife and the child is reasonable. The wife has no source of income and she has to look after the minor child. The child studies in class-I, in English medium school.
5. Having heard learned Counsel for the respective parties, this Court finds the following defects in the order impugned:
 - (i) The income of the husband was not taken into consideration. There is no finding of such income.
 - (ii) Affidavits of assets and liabilities which were filed by the parties were not discussed.

(iii) The application was kept pending and the matter was sent for reconciliation without the same being disposed of.

(iv) The court found that the wife could not support her claim that the husband had an income of Rs.1,00,000/-, yet passed an order allowing Rs.12,000/- per month as maintenance *pendente lite*.

6. Although it is settled law that the wife is entitled to maintenance *pendente lite* from the date of filing of the application, basic parameters with regard to the award of maintenance *pendente lite* should have been considered, i.e.,

- (a) Income of the husband.
- (b) Expenses of the husband.
- (c) Income of the husband from other sources.
- (d) Financial condition of the wife.
- (e) The status of the parties.
- (f) The expected expenses that the wife will incur for herself and her child in terms of food, clothing, shelter, education, medicines etc.

7. This Court is of the view that for determination of the maintenance *pendente lite*, the above factors ought to have been discussed. These issues have to be decided on consideration of the evidence, both oral and documentary. The application should have been disposed of upon considering the above issues.
8. Under such circumstances, the order impugned is set aside.
9. The learned court is directed to dispose of the said application under Section 24 of the Hindu Marriage Act within a period of four months from the date of communication of this order, if the reconciliation fails. Parties will be entitled to adduce evidence.
10. Till disposal of the application, the husband shall pay Rs.6,000/- per month in total, Rs.3,000/- per month for the wife and Rs.3,000/- per month for the minor child, as maintenance *pendente lite* on and from February, 2024. First of such payment shall be made within 10th of March, 2024. Thereafter, month by month every month within 10th of the succeeding month. Towards arrear maintenance, the husband will pay an *ad hoc* amount of Rs.50,000/- in four equal monthly instalments. First of such instalment shall be

paid within March 10, 2024 and thereafter within 10th of the succeeding month till the amount is liquidated. All payments made earlier, shall be adjusted with the arrear maintenance and the amount so awarded by this Court as an interim maintenance of Rs.6,000/- shall be inclusive of the amount which is being paid as per the direction of the court in the proceedings under Section 125, Cr.P.C.

11. The revisional application is, thus, disposed of.

12. There will be, however, no order as to costs.

13. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)