

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**CO 3446 OF 2023
MANISHA KEDIA
VS
MANOJ KUMAR KEDIA**

For the Petitioner : Mr. Arnab Roy,
Mr. Satyam Mukherjee,
Ms. Sayani Ahmedadvocates

For the Opposite Party : Mr. Rachit Lakhmani,
Mr. Shubham Gupta,
Mr. Piyush Kumar,
Mr. Satyabrata Das ... advocates

Reserved on : 19.02.2024

Judgment on : 04.04.2024

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the wife and is directed against the order no. 150 dated April 10, 2023 passed by the learned Additional District Judge 8th Court at Alipore in Matrimonial Suit No. 45 of 2007.
2. By the order impugned, the application for enhancement of alimony *pendente lite* at the instance of the wife/ petitioner stood rejected.
3. Facts giving rise to this civil revisional application, in a nutshell, are as follows:-

The parties got married on 28.01.1995. Out of the said wedlock two female children were born on 29.11.1995 and 10.10.1999. The husband/opposite party herein filed a Matrimonial Suit being no. 966 of 2005 which was subsequently renumbered as Matrimonial Suit No. 45 of

2007. An application under Section 24 of the Hindu Marriage Act, 1955 (for short “H.M. Act”) was allowed granting maintenance to the extent of Rs. 8000/- per month to the wife and Rs. 6000/- per month for the two daughters. The husband challenged the said order by filing a civil revision application being C.O.1791 of 2009 which was disposed of on 30.11.2012 directing the husband to pay an amount of Rs. 4000/-per month for wife and Rs. 3000/- per month for each of the two daughters.

4. The wife claimed that when the order for alimony was passed, the daughters were students of Class IX and Class IV respectively. The wife claimed that the elder daughter got admission in MBA Course for which a substantial amount is necessary for educational expenses. The younger daughter was pursuing 2nd year B.A. (Hons.) Course for which a substantial amount is necessary for educational expenses. Accordingly, the wife filed a petition for enhancement of alimony *pendente lite* claiming educational expenses for both the daughters to the extent of Rs. 12000/- per month and Rs. 10,000/- per month for maintenance for the wife and the daughters and Rs. 50,000/- towards litigation cost.
5. Husband contested the application for enhancement of alimony contending that the alimony already fixed is high and he would not be able to pay more than that amount. It was further stated that since the daughters are adults, they are not entitled to any alimony.
6. The learned trial judge rejected the application for enhancement of alimony *pendente lite*, by holding that there is no scope to interfere in the matter as the amount has been fixed by the High Court.
7. Mr. Roy, learned advocate for the petitioner submitted that a substantial amount is necessary for the educational expenses of the younger daughter who, after completing her graduation, is currently studying Masters in a reputed institution. He further submitted that the amount

of alimony granted by the Hon'ble High Court is not sufficient for the support of herself and her younger daughter at present. He placed reliance upon a decision of the Hon'ble Division Bench in the case of ***Manoj Kumar Jaiswal vs. Smt. Lila Jaiswal*** reported at **AIR 1987 Cal 230** in support of his contention that the Court can grant interim maintenance to the children also in an application under Section 24 of the Hindu Marriage Act. For the same proposition he also placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Jasbir Kaur Sehgal (Smt.) vs. District Judge, Dehradun & Ors.*** reported at **(1997) 7 SCC 7**.

8. The learned advocate for the opposite party seriously disputed the submission of the learned advocate for the petitioner. He contended that an adult unmarried daughter who does not suffer from any physical and/or mental abnormality or injury cannot claim maintenance under Section 125 of Criminal Procedure Code. He submitted that under the Hindu Marriage Act, the wife can claim maintenance for herself and/or the minor children. He submitted that adult daughters can claim maintenance from her father only upon making an application under Section 20 of the Hindu Adoption and Maintenance Act, 1956. In support of his contention that claim of maintenance by the wife on account of her adult daughters is not maintainable, he placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Abhilasha vs. Prakash and Others*** reported at **(2021) 13 SCC 99**. He distinguished the decision in the case of ***Manoj Kumar Jaiswal*** (supra) by contending that the claim for maintenance of major children was not in issue therein.
9. Heard the learned advocates for the parties and perused the materials placed.

10. This Court finds that the learned trial judge rejected the application for enhancement of alimony only on the ground that the amount of alimony was fixed by this Hon'ble Court in an earlier civil revision application.
11. Section 24 of the Hindu Marriage Act provides for payment of maintenance during the proceeding under the said Act. It is well settled that there is no set formula for fixing the amount of maintenance. While fixing such amount, Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay etc. Court should also consider that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in prosecution her case.
12. In the case on hand, the matrimonial suit was filed in the year 2005 and the amount of alimony was fixed by this Hon'ble Court on 30.11.2012 in C.O. 1791 of 2009. When the application under Section 24 of the Hindu Marriage Act was filed, the daughters were studying in school. The application for enhancement of alimony was filed in the year 2019 when the elder daughter was pursuing her MBA course and the younger daughter was studying B.A. (Hons.) course. The impugned order has been passed on April 10, 2023. In the meantime, the elder daughter has succeeded in getting an employment and the wife claims that the younger daughter is studying Masters Course. Therefore, it cannot be disputed that due to passage of time there has been a substantial change in the need of the wife for herself and her daughters.
13. The learned Trial Judge being swayed by the order passed in C.O. 771 of 2016 was of the view that under such circumstances there was no scope for the trial court to interfere in the matter of fixation of the amount which has been settled by this Hon'ble Court.

14. A co-ordinate bench in its order dated 19.07.2017 in C.O. 771 of 2016 observed that once the entire payment is made on account of arrears and there is no default in payment of the current amounts, it will be open to the husband to pursue the Matrimonial suit before the trial court. By the said order the husband was directed to pay off the arrears alimony *pendente lite* in installment. In the said order the co-ordinate bench neither fixed any amount of alimony nor restrained the wife from praying for enhancement of alimony. Therefore, the reasons for rejecting the application for enhancement is not acceptable to this Court. The impugned order is, thus, liable to be set aside.
15. The learned advocate for the opposite party would contend that since this Hon'ble Court in C.O. 1791 of 2009 passed an order dated 30.11.2012 fixing the amount of alimony it was not open for the wife to pray for enhancement of alimony.
16. In **Sipra Bhattacharya vs. Dr. Apares Bhattacharyya** reported at **(2009) 4 SCC 366**, the Hon'ble Supreme Court in an appeal challenging an order passed in a civil revision application, wherein the Hon'ble High Court while disposing of the civil order observed that it shall not be open to the wife to press for any enhancement of the existing amount of alimony *pendente lite*, observed that the High Court was not justified in passing the impugned order in the manner it has done. The Hon'ble Supreme Court further held that it is the duty of the Court to go into the question of enhancement and dispose of the application for enhancement of alimony before the suit for divorce is disposed of.
17. The order in C.O. 1791 of 2009 was passed on 30.11.2012 based on the materials and factors existing at the relevant point of time. The said order also does not impose any restriction from pressing for enhancement of the amount of alimony *pendente lite* fixed by it.

18. The object of Section 24 of the H.M. Act is to provide maintenance to a spouse who does not have any independent income during the proceeding. If such proceeding continues for a long time, a situation may arise where an amount initially awarded may require some variation.
19. There has also been a substantial rise in the cost of living index than that in the year 2012 when this Hon'ble Court fixed the alimony. Considering the fact that the Matrimonial Suit was initiated in 2005 and is still pending, this Court is of the considered view that the alimony fixed in the year 2012 cannot be said to be sufficient to support the present need of the wife.
20. The next issue that arises is whether the adult daughter is entitled to maintenance under Section 24 of the H.M. Act.
21. This issue is no longer *res integra*. The Hon'ble Supreme Court in **Jasbir Kaur Sehgal** (supra) held that Section 24 of the H.M. Act cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. In the said reported decision, the Hon'ble Supreme Court after noticing that the wife in that case was to maintain the eldest adult, unmarried daughter, held that her right to claim maintenance would include her own maintenance and that of her adult daughter.
22. The issue that fell for consideration in **Abhilasha** (supra) was whether a major unmarried daughter not suffering from any physical or mental abnormality/ injury is entitled to claim maintenance from her father in a proceeding under Section 125 Criminal Procedure Code. The said issue is not germane in the case on hand and, therefore, the said decision is not applicable to the instant case.
23. The decision in the case of **Jasbir Kaur Sehgal** (supra) squarely applies to the facts of the case on hand. By applying the ratio of the said reported

decision, to the case on hand, this Court holds that the adult daughter is entitled to maintenance from her father under Section 24 of H.M. Act.

24. For such reason this Court is unable to accept the submission of the learned advocate for the opposite party that the petitioner is not entitled to claim maintenance for her adult unmarried daughter from the opposite party under Section 24 of H.M. Act.
25. The decision in the case of ***Monoj Kumar Jaiswal*** (supra) is distinguishable on facts as the issue which arose for consideration therein was whether interim maintenance under Section 24 H.M. Act can be granted for minor children.
26. The learned trial judge did not enter into the merits of the enhancement application. Due to passage of time since the filing of such application, the wife claims that there has been a subsequent change in her needs for support which was sought to be substantiated for the first time before this Court by producing documents, this Court is not inclined to enter into the merits of the claim for enhancement in this Civil Order and thinks fit that such issue should be best left for the learned trial judge to decide.
27. For the reasons as aforesaid the impugned order stands set aside. The learned trial judge is directed to consider the application for enhancement of alimony afresh on merits in the light of the observations contained hereinbefore and to dispose of the said application as expeditiously as possible but preferably within a period of eight weeks from the receipt of a server copy of this order without granting any unnecessary adjournments to either of the parties. Parties will also be at liberty to produce materials/ documents in support of their respective contentions in connection with the prayer for enhancement. Since the suit has reached the stage of evidence, all further proceedings in

connection with the Matrimonial Suit before the trial court shall remain stayed till the disposal of the enhancement application. Once the arrears, if any, as per the decision on the enhancement application are liquidated and the husband is not in default of payment of current alimony, it will be open to the opposite party herein to pursue the Matrimonial Suit before the learned trial court.

28. With the above observations and direction, C.O. 3446 of 2023 stands allowed. There shall be, however, no order as to costs.
29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)