

February 2, 2024
Sl. No.14
Court No.19
s.biswas

CO 3652 of 2023

Sri Devendra Kumar Thakur
vs.
Smt. Nishu Kumari @ Rai Thakur

Ms. Sangeeta Roy
Mr. Sandeep Prasad Shaw
Mr. Chandra Prakash

... for the petitioner

Mr. Subrata Bhattacharyya
Ms. Shpra Santra

... for the opposite party

The revisional application has been filed challenging two orders dated January 10, 2023 and August 22, 2023. Both the orders were passed by the learned Additional District Judge, 1st Court at Durgapur, Paschim Bardhaman.

By the order dated January 10, 2023, the learned court below directed the petitioner/husband to pay a sum of Rs.10,000/- to the wife and Rs.5000/- to the minor child, as maintenance pendente lite along with litigation cost of Rs.20,000/-. Such order is under challenge before this court on the ground that the petitioner had other liabilities, which ought to have been taken into consideration by the learned court below.

It is further contended that the learned court below should not have awarded the amount of Rs.15,000/- in total. The said amount was over and above the usual formula, that the quantum of

maintenance pendente lite, should be between 1/3rd and 1/5th of the income of the husband.

This court has gone through the decision challenged herein. The learned court has appreciated the income of the husband and the wife. Although, the husband had alleged that the wife had an independent source of income from private tuition, such contention could not be proved by the husband. The learned judge, upon considering the relevant decisions of the Hon'ble Apex Court and the parameters laid down by the Hon'ble Apex Court with regard to the quantum of maintenance pendente lite, arrived at the aforementioned quantum. The duration of the marriage, the means and the conduct of the spouses, the ability of the spouse to earn, payment for education of the child and other reasonable needs of the mother and the child, were taken into consideration.

The court arrived at the conclusion that the amount of Rs.15,000/- (Rs.10,000/- for the wife and Rs.5000/- for the child) would be sufficient for maintenance of the child and the wife.

This court does not find any reason to interfere with the order impugned for the following reasons:

- a) The learned court had taken into consideration the admission of the petitioner that he was an employee of the

BSF and as per salary statement of April, 2022, his gross salary was Rs.52,912/-.

- b) The wife did not have any independent income, was established.
- c) The wife and the child were entitled to live in the same status which the petitioner enjoyed.
- d) The income of the petitioner, as an employee of the BSF was a fixed income. He had other benefits.
- e) The petitioner was gainfully employed and has a secured job.

With the rise in the price index and the market condition, this court is of the view that the expenses that the wife will incur for food, lodging, clothing expenses for the child, entertainment of the child, medical expenses, etc., Rs.15,000/- per month, is reasonable. It is less than 1/3 of the gross salary of the husband.

Under such circumstances, the order dated July 1, 2023 does not call for any interference.

With regard to the propriety of the order dated August 22, 2023, this court finds that the petitioner has violated the order of the court by not paying maintenance. The court rightly directed the outstanding dues should be deducted from his

salary. As the law provides that $1/3^{\text{rd}}$ salary of a person can be attached, the direction of deduction of Rs.1,40,000/- in four equal instalments, would amount to deduction of more than $1/3^{\text{rd}}$ of the salary every month.

Under such circumstances, the said order is modified to the extent that amount of Rs.1,40,000/- from the salary of the petitioner, namely, Devendra Kumar Thakur, shall be made in ten equal monthly instalments.

The revisional application stands disposed of accordingly.

The order impugned dated August 22, 2023, is accordingly modified. Rest of the order remains unaltered.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)