

27.03.2024

Sl. No.: 31

Court No.30
BM

CRR 4357 of 2022

Tithi De Adhikarry

Vs.

State of West Bengal & Anr.

Mr. Dipayan Kundu

... for the petitioner

Affidavit of service showing due service upon the opposite party no.2 is filed.

In spite of due service there is no representation on behalf of the opposite party no.2 in the present case.

The present revision has been preferred against an order dated 30th September, 2022 passed by the learned Additional District & Session Judge, 2nd Court, Uluberia, Howrah in connection with criminal appeal 4 of 2021, thereby setting aside an order under Section 23 of the Protection of Women from Domestic Violence Act, 2005, for the maintenance order passed by the learned Additional Chief Judicial Magistrate, Uluberia, vide order dated 21.08.2021 in Misc. Case No.174 of 2020 granting interim maintenance to the petitioner, at the rate of Rs.18,000/- per month.

On hearing the learned counsel for the petitioner and on considering the materials on record, it appears that the learned ACJM, Uluberia vide his order dated 21.08.2021 in Misc. Case No.174 of 2020 had directed the husband respondent therein to pay a monthly maintenance allowance to the extent of Rs.18,000/- per month.

Learned Magistrate had considered the salary of the husband being Rs.78,000/- per month and also the income of the wife at Rs.12,570/- per month.

Two appeals have been filed, one by the husband and another by the wife respectively praying for reduction of the maintenance amount and enhancement of the maintenance amount.

The learned appellate court being the Additional District & Sessions Judge, 2nd Court, Uluberia, Howrah reduced the said amount of maintenance from Rs.18,000/- to Rs.7,131/- per month.

The learned appellate court at the interim stage on certain conclusion came to the said decision and fixed the appeals for hearing.

It appears that the main application before the learned Magistrate is still pending and the appeals before the appellate court are from an interim order.

It also appears that the order under revision is also an interim order.

Considering the fact that the husband/opposite party no.2 herein has failed to appear and contest the revision at this stage, this court sets aside the order under revision and directs the appellate court to dispose both the two appeals within a period of three months from the date of this order on hearing both sides and considering the materials on record, by following the guidelines of the Supreme Court in **Rajnesh vs. Neha (2021) 2 SCC 324**, including filing of affidavit of Assets and liabilities by both sides.

The revisional application being CRR 4357 of 2022 is accordingly allowed.

The order dated 30th September, 2022 passed by the learned Additional District & Session Judge, 2nd Court, Uluberia, Howrah in connection with criminal appeal 4 of 2021, thereby **modifying** an interim order of maintenance under Section 23 of the Protection of Women from Domestic Violence Act, 2005, passed by the learned Additional Chief Judicial Magistrate, Uluberia, vide order dated 21.08.2021 in Misc. Case No.174 of 2020 granting interim maintenance to the petitioner, at the rate of Rs.18,000/- per month, **is hereby set aside.**

The learned appellate court shall not be influenced by the order of this court while finally disposing the appeals.

Revisional application being CRR 4357 of 2022 is thus, disposed of.

All applications, if any, connected thereto stand disposed of.

Interim order, if any, stands vacated.

Let a copy of the order be sent to the learned trial court for compliance.

Urgent photostat certified copies of this order, if applied for, shall be supplied to the learned counsel for the as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)