

Item No.33
21.05.2024
Court. No. 19
GB

C.O. 4128 of 2023

Sri Sujan Modak
Vs.
Smt. Piyali Saha

Mr. Supriyo Das

...for the Petitioner.

*Mr. Sagnik Chatterjee,
Mr. Sayan Mukherjee*

...for the Opposite Party.

1. The revisional application arises out of an order dated July 20, 2023, passed by the learned Additional District Judge, 6th Court at Alipore in Misc. Case No.53 of 2021. The misc. case was an application filed in connection with Matrimonial Suit No.2658 of 2019. The wife/opposite party prayed for maintenance pendente lite for herself and her minor child. The child is three years old, who resides with the mother.
2. By the order impugned, the learned court directed payment of Rs.25,000/- as maintenance pendente lite, from the date of filing of the application. A sum of Rs.10,000/- was awarded to the wife and Rs.15,000/- to the minor child.
3. The learned advocate for the petitioner/husband has challenged the order on various grounds:-
 - a) An exorbitant amount has been awarded.
 - b) The wife is well-educated and can earn her own living.

- c) The learned court failed to take into consideration that Rs.15,000/- was already being paid to the child.
4. This Court finds from the affidavit of assets disclosed by the husband that his monthly income at the relevant point of time was Rs.70,000/-. This is the admitted income of the husband/petitioner. From the assets and liabilities column, it appears that the husband has a house building loan and an EMI is deducted from his income. It also appears that the husband failed to prove that the wife had an income of her own.
5. The learned court took into account the husband's income and the other parameters required to be assessed while quantifying the amount of maintenance to be paid to the wife and child, namely, the food, clothing, shelter, miscellaneous expenses, medical expenses of the wife and the child. The learned court also took into account that only because the wife was well-educated that would not be a reason for granting maintenance.
6. Under such circumstances, this Court does not find any reason to interfere with the order impugned. Maintenance has been allowed at a rate lower than $\frac{1}{3}^{\text{rd}}$ of the income of the husband, which is justified. The husband being a qualified engineer and working in a multinational company, is required to maintain

his wife and child so that they are able to enjoy the same standard of living as he enjoys. The basic parameters, namely, rentals, cost of living, expenses towards the child, medical expenses, entertainments, etc., justify the quantum awarded by the learned court.

7. In the matter of ***Rajnesh v. Neha and ors.*** ***reported in (2021) 2 SCC 324*** the Hon'ble Apex Court discussed the various criteria for determining the quantum of maintenance and the relevant factors to be taken into consideration in order to quantify the amount. The object behind granting maintenance was to ensure that the dependent spouse was not reduced to destitution or vagrancy on account of failure of the marriage. Yet, an excessive and unreasonable amount could not be imposed as a punishment upon the other spouse. While discussing a decision of the Delhi High Court, the Apex Court also approved the factors to be relevant. Such finding of the Apex Court is at paragraph 57 of the judgment. The relevant paragraph is quoted below:-

“(v) The Delhi High Court in *Bharat Hedge v Smt. Saroj Hegde* laid down the following factors to be considered for determining maintenance :

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.
11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 of the Act. 17.
- (vi) Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable."

8. In the celebrated judgment of Justice Krishna Iyer in the matter of ***Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and ors.*** reported in ***(1978) 4 SCC 70***, the object behind promulgation of maintenance laws, had been discussed, which is quoted below:-

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of [Article 15\(3\)](#) reinforced by [Article 39](#). We have no doubt that Sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker Sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts."

9. In ***Rajnesh (supra)*** it was held that even if the wife had some income, the same would not be a ground for reducing the maintenance determined to be payable by the husband. The relevant paragraphs are set out below:-

“62. The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance on this issue in the following judgments.

63. In *Shailja & Anr. v Khobbanna*, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home.⁴⁰ Sustenance does not mean, and cannot be allowed to mean mere survival.

64. In *Sunita Kachwaha & Ors. v Anil Kachwaha* the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

65. The Bombay High Court in *Sanjay Damodar Kale v Kalyani Sanjay Kale* while relying upon the judgment in *Sunita Kachwaha* (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

66. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a *Chander Prakash Bodhraj v. Shila Rani Chander Prakash*. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.”

10. Accordingly, the revisional application is dismissed.

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

(Shampa Sarkar, J.)