

26.02.2024
Sl. No.9(DL)
srm

C.O. No. 4306 of 2023

Himanshu Srivastava

Versus

K. Diksha

Mr. Kallol Mondal,
Mr. Krishan Ray,
Mr. Souvik Das,
Ms. Anamitra Banerjee

...for the Petitioner.

Mr. Probal Mukherjee, Sr. Advocate
Ms. Kanchan Roy,
Mr. Swaraj Naskar

...for the Opposite Party.

1. Supplementary affidavit is taken on record.
2. The revisional application arises out of an order dated September 4, 2023 passed by the learned District Judge at Alipore, South 24-Parganas, in Misc. Case No.238 of 2023 arising out of Mat Suit No.944 of 2023.
3. An application under Section 24 of the Hindu Marriage Act filed by the wife was allowed on consent. Both the parties settled before the learned court that the husband would pay Rs.45,000/- per month to his wife, i.e., the opposite party with effect from month of May, 2023. Any amount which was

being paid or had been paid towards maintenance in any other proceeding would be adjusted. The payment was directed to be made within 10th of each succeeding month.

4. Mr. Mondal, learned Advocate for the petitioner/husband challenges the order impugned on the following grounds:-

(a) Consent was wrongly recorded.

(b) The wife earns Rs.40,000/- per month and the husband earns a little over a lakh. There was no reason why Rs.45,000/- should be awarded as maintenance *pendente lite*, when the wife was capable of maintaining herself.

(c) Steps were taken by the petitioner to bring it to the knowledge of the court about the wrong recording of consent, but the said application is yet to be disposed of.

5. In the meantime, the wife had filed an application for stay of all further proceedings in the matrimonial suit and also for an order of attachment of the salary of the husband.

6. Mr. Mukherjee, learned Senior Advocate appearing on behalf of the wife submits that the consent order

cannot be challenged in this revisional application. It is next submitted that in the proceeding under Protection of Women from Domestic Violence Act (hereinafter referred to as the Domestic Violence Act) also, Rs.40,000/- per month had been awarded by the learned appeal court. The order of the Hon'ble Supreme Court staying the proceedings under the Domestic Violence Act would not operate as a stay of the order of maintenance allowed by learned appeal court. The proceedings in Case No.AC-801 of 2023 titled as K. Diksha vs. Himanshu Srivastava & Ors. which is pending before the learned 1st Class Judicial Magistrate, 9th Court at Alipore, had been stayed, pending adjudication of the transfer application. Whereas, the appeal court, i.e. the Court of the learned District and Sessions Judge, Alipore had passed the order on July 7, 2023 in the appeal preferred by the husband, directing that the wife was to be paid Rs.30,000/- per month as maintenance and Rs.10,000/- for her alternative residence.

7. Mr. Mondal contends that when the proceedings under the Domestic Violence Act had been stayed by the Hon'ble Apex Court, the same amounts to

automatic stay of the order of the learned District and Sessions Judge at Alipore dated July 7, 2023. I do not find from the records that such order of District and Sessions Judge, has been stayed. However, the proceedings under the Domestic Violence Act are not amenable to the jurisdiction of this court. This proceeding is restricted to the order passed in the Misc. Case arising out of MAT Suit No.44 of 2023.

8. When a consent order had been recorded and maintenance of Rs.45,000/- per month had been awarded on consent, the same cannot be interfered with. This Court is of the view that the objection raised to the recording of consent and the application for recalling of the order impugned, should be disposed of for the ends of justice.
9. Under such circumstances, the learned court is directed to dispose of the application filed by the husband for recalling in accordance with law, within a period of one month from the date of communication of this order.
10. However, it is settled law that if the amount awarded by the court is not paid, the wife can approach the court for execution. The modes of

execution provided under the Code of Civil Procedure, will govern the field.

11. In order to avoid attachment of the salary, the husband will pay an *ad hoc* amount of Rs.1,50,000/- to the wife within two weeks from date. Failure on the part of the husband to pay such amount, shall entitle the wife to proceed with the execution and pray for attachment of salary. If such amount is paid, the execution shall be stayed till the disposal of the application filed by the husband praying for recalling of the order by which consent was recorded.

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

13. There shall be no order as to costs.

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

(Shampa Sarkar, J.)