

Item No.2
05.04.2024
Court. No. 19
GB

C.O. 4333 of 2023

Capt. Indranil Saha
Vs.
Smt. Saswati Saha

*Mr. Ranajit Chatterjee,
Mr. Aniruddha Mitra*

...for the Petitioner.

*Mr. Abhijit Ch. Majumder,
Mr. Nitai Ch. Saha*

...for the Opposite Party.

1. The revisional application arises out of an order dated July 27, 2016, passed by the learned Additional District Judge, 10th Court at Alipore in Misc. Case No.17 of 2013 arising out of Matrimonial Suit No.2474 of 2014.
2. By the order impugned, the learned court rejected an application under Section 151 of the Code of Civil Procedure filed by the petitioner/husband praying for modification of the of the order dated July 27, 2016.
3. The order was sought to be modified on the ground that the learned court had wrongly directed payment of Rs.50,000/- maintenance pendente lite to the wife and the two children, i.e., Rs.20,000/-; Rs.15,000/- and Rs.15,000/- over and above Rs.30,000/- that was allowed under the Domestic Violence Act. The learned court held that insofar as the exclusion of the amount awarded to the son was concerned, no proof of age of the son had been filed and the amount of Rs.50,000/- could not be altered or modified as it was not a mistake on the face of record. The court further held that the court had consciously

excluded the amount awarded in the domestic violence proceeding while awarding maintenance.

4. The learned advocate for the petitioner submits that the law has been laid down in ***Rajnesh versus Neha and Another*** reported in ***(2021) 2 SCC 324***. Maintenance awarded in any other proceeding would be adjusted with the maintenance awarded in the proceeding under Section 24 of the Hindu Marriage Act and the highest of the amount was required to be paid. Reliance has been placed on ***Ganesh Chandra Banerjee versus Francy Banerjee*** reported in ***2005 SCC OnLine Cal 781*** which also held that the amounts paid under the other proceedings should be adjusted with the maintenance to be awarded by the court under Section 24 of the Hindu Marriage Act and the highest of the amount shall be payable. Further reference has been made to the decision of ***Surendra Nath Aroar versus Sm. Puspita Arora*** reported in ***1978 SCC OnLine Cal 268*** on the proposition that $\frac{1}{3}^{\text{rd}}$ to $\frac{1}{5}^{\text{th}}$ of the income of the husband, should generally be the quantum of maintenance.
5. Mr. Chatterjee, learned advocate for the petitioner/husband submits that subsequently the amount awarded to the son was deleted by the learned court. The proceeding under the Domestic Violence Act was dismissed. The execution of the proceeding under the Domestic Violence Act was also dismissed. It further appears that the learned Additional District Judge, 10th

Court at Alipore by order dated April 3, 2023 rejected the execution case filed in connection with the misc. case, as misconceived.

6. The learned advocate for the wife/opposite party submits that the husband had an income of more than Rs.4,00,000/- and as such the court was mindful of such income while awarding Rs.50,000/- as maintenance over and above Rs.30,000/- that was awarded in the domestic violence proceeding. It is further submitted that the arrears are still due.
7. Moreover, the revisional application challenging the earlier order dated July 27, 2016 was dismissed for default. No further proceedings could be taken out by the petitioner.
8. Heard the learned advocates for the respective parties. This revisional application arises out of rejection of an application for modification of the order dated July 27, 2016 and the same is maintainable.
9. This Court is not inclined to decide the issue with regard to the direction for payment of maintenance in respect of the son. The learned court by a subsequent order, had taken care of that and the order passed by the learned court has attained finality. The issue is whether the order dated July 27, 2016 is workable under the special facts and circumstances of the case and whether the same is correct in view of the fact that the law has been well-settled that the maintenance shall be allowed to the wife and the children not in exclusion of the amount awarded in other

proceedings. The amount awarded under Section 24 of the Hindu Marriage Act should be inclusive of the amount that was awarded in the other proceedings. It is not the finding of the court that the income of the husband justified payment of a total amount of Rs.80,000/- as maintenance pendente lite.

10. The court came to a finding that Rs.20,000/- and Rs.15,000/- each for each child would be appropriate. Considering the salary certificate of the husband at the relevant point of time, which recorded that his income was a little more than one lakh, the quantum was awarded. The court recorded that the wife was not in a position to prove that the husband had income over Rs.4,00,000/-. Moreover, the domestic violence proceedings have been dismissed. Thus, the direction with regard to payment of Rs.50,000/- in exclusion of Rs.30,000/- is no longer operative. Such direction is set aside.
11. Thus, the direction to pay Rs.50,000/- in addition to Rs.30,000/- was erroneous and not in consonance with law laid down by the Hon'ble Apex Court. The order impugned deserves to be modified to the extent that the amount of Rs.20,000/- to the wife and Rs.15,000/- to the minor girl child shall be paid from the date of filing of the application under Section 24 of the Hindu Marriage Act. The payment for the son at the rate of Rs.15,000/- shall be upto July 2022 as already directed by the trial court. The order impugned is modified accordingly. The arrears, if any, as per the above direction, shall be paid in five

equal monthly instalments, upon adjusting whatever was paid till now. The maintenance for March and April, 2024 of Rs.70,000/- shall be paid within April 15, 2024. The amount of Rs.35,000/-shall be paid month by month within 10th of every month on and from May, 2024 till disposal of the application for enhancement or further orders of the learned trial judge. In case of default, the suit shall remain stayed. Each of the instalments with regard to arrears shall be paid from May, 2024.

12. It is found that the wife has already asked for enhancement of the maintenance due to changed circumstances and on the ground that the salary of the husband had gone up. Such application shall be decided by the court independently and on evidence to be adduced by the parties. The said application shall be disposed of within a period of three months.
13. The husband has already applied for permission to adduce evidence virtually. The learned court shall consider the same in the light of the situation and for expeditious disposal of the proceedings. The husband will be entitled to file his written objection to the application for enhancement, within a month from date. Upon disposal of the application for enhancement, the learned court shall make a sincere endeavour to dispose of the suit within a year, provided the amount as directed by this Court and if enhanced by the trial court later, is paid by the husband.
14. Accordingly, the revisional application is disposed of.

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

(Shampa Sarkar, J.)