

S/L 30
05.12.2024
Court No.2
SD

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

RVW 1 of 2021
With
CAN 1 of 2021
In
CO 87 of 2019

Jitendra Nath Sarkar
Vs.
Smt. Dipali Sarkar

Mr. Kalyan Kr. Chakraborty
Mr. Debajit Kundu

...for the Petitioner.

Mr. Abhishek Sarkar

...for the Respondent.

The parties are husband and wife.

The petitioner has filed a suit for dissolution of marriage with the opposite party by a decree of divorce. The said suit being Matrimonial Suit No.159 of 2017 is pending before the learned Additional District Judge, 1st Fast Track Court, Jalpaiguri. In the said suit, the opposite party had filed an application under Section 24 of Hindu Marriage Act, 1955 for alimony *pendente lite* which was registered as Misc. Case No.6 of 2017.

The learned Trial Judge by order dated October 9, 2018 had disposed of the said misc. case by directing the petitioner to pay *pendente lite* at the rate of Rs.6,000/- per month. The petitioner had assailed the said order, in CO 87 of 2019. This Court by the order dated January 24, 2020 had dismissed the said revisional application on merit in the absence of the petitioner. The petitioner is seeking review of the said order.

The memorandum of review was filed out of time; as such, the petitioner has taken out an application being CAN 1 of 2021 for condonation of such delay.

Perused the application. The delay has been properly explained, as such, is condoned.

Accordingly, RVW 1 of 2021 be registered. CAN 1 of 2021 is thus disposed of without any order as to costs.

RVW 1 of 2021:-

The petitioner is seeking review of the order dated January 24, 2020 on the ground that the opposite party has been awarded a sum of Rs.1,000/- in a proceeding under Section 125 of the Code of Criminal Procedure but the amount has not been adjusted against the amount directed to be paid on the application under Section 24 of the said Act of 1955.

Learned advocate for the petitioner submits that there was a compromise in the proceeding under Section 125 of the Code of Criminal Procedure; in terms thereof, the petitioner has paid a portion of his retiral benefit to the opposite party, and has also transferred his house property in her name; but he fails to produce any document in support of his such contention.

Be that as it may, the amount awarded in the proceeding under Section 125 of the Code of Criminal Procedure shall be adjusted against the order of maintenance passed in the matrimonial suit.

Learned advocate for the opposite party submits that a huge amount of maintenance is lying due.

The further proceedings of the connected matrimonial suit shall remain stayed so long the said arrear maintenance is not paid.

Needless to say, the opposite party is entitled to initiate execution proceeding for recovery of the arrear amount of maintenance.

RVW 1 of 2021 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)