

Ct. No.3

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BP

**03.07.
2024**

**In the High Court at Calcutta
Jalpaiguri Circuit Bench
Civil Revisional Jurisdiction**

C.O. 62 of 2024

**Narayan Saha
-Versus-
Smt. Dipika Saha Das**

Mr. Bikramaditya Ghosh
Mr. Bhaskar Roy Mohasoi
Ms. Madhushri Dutta
...For the Petitioner

Mr. Jaydeep Kanta Bhowmick
Mr. Sayantan Bhowmik
Ms. Rikita Sarkar
Ms. Priti Das
....For the Opposite Party

Being aggrieved and dissatisfied with the order dated 19th January, 2024 passed in Misc. Case No. 4 of 2022 under Section 24 of Hindu Marriage Act, 1955 arising out of Mat Suit Case No. 205 of 2020 by the learned Additional District Judge, Fast Track 1st Court, Jalpaiguri, present application has been preferred.

By the order impugned learned court below directed the opposite party/husband to pay Rs. 7,000/- per month towards maintenance pendente lite. During course of hearing learned counsel appearing on behalf of the petitioner submits that both the parties have filed affidavit of assets and liabilities before the court below in terms of direction made by the Apex Court in Rajnesh Vs. Neha (2021) 2 SCC 324 but learned court

below without going through those affidavit of assets and liabilities and also without considering the financial position and the status of the parties arbitrarily came to a conclusion and directed the opposite party to pay pendente lite maintenance of Rs. 7,000/- per month and as such the order impugned is not sustainable in the eye of law and accordingly he has prayed for setting aside the said order.

Mr. Bhowmick, learned counsel appearing on behalf of the opposite party submits that the order impugned is justified and was passed after considering the submissions made on behalf of the parties and as such the order impugned does not call for interference by this Court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made by both the parties. On perusal of the copy of the order annexed in the record as Annexure P-4 it appears that the learned court below has recorded in his order dated 10th August, 2023 that both the parties filed affidavit of assets before the court below. However, court recorded in the order impugned that *“even after the lapse of time none of the parties filed their affidavit regarding the assets and liability.”*

Such observation of the court below appears to be perverse firstly because he overlooked the affidavits and secondly in view of the fact that in Rajnesh Vs.

Neha (Supra) Apex Court has clearly laid down the specific guideline to be followed in such cases while determining the question of maintenance/interim maintenance to ensure that there is uniformity and consistency in deciding the same. Learned court below ought to have considered the assets and liabilities disclosed by the parties by way of affidavit while considering the mode, manner and quantum of interim maintenance but instead of that he recorded that *“considering the status of the parties and the present market scenario and ever rising market price of all the essential commodities”* he is of the considered view that the quantum of maintenance would be Rs.7000/- per month, which according to me is not based on proper reasoning.

In such view of the matter, the order impugned dated 19th January, 2024 passed in Misc. Case No.4 of 2022 is hereby set aside.

Learned court below is directed to consider the wife's application under Section 24 afresh in the light of affidavit of assets and liabilities filed by the parties and will come to a reasoned conclusion preferably within a period of eight weeks from the date of communication of this order.

However, till disposal of the application under Section 24 afresh, the petitioner/husband will go on paying Rs. 7,000/- per month as directed in the

impugned order, without prejudice to the rights and contentions of the parties.

C.O. 62 of 2024 is accordingly disposed of.

(Ajoy Kumar Mukherjee, J.)