

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side**

CO 150 of 2023

**Nripendra Chandra Mahanta @ Mohanta
-versus-
Smt. Pramila Mahanta**

Mr. Subhasish Misra
Mr. Swarup Das

... for the petitioner.

This is an application by the husband challenging an order of maintenance *pendente lite* passed by learned District Judge, Cooch Behar in an application under Section 24 of the Hindu Marriage Act, 1955 (in short, "1955 Act") filed by the opposite party/wife in the Matrimonial Suit No.47 of 2020 instituted by the petitioner/husband.

The petitioner says that the quantum of maintenance fixed under the order impugned is Rs.9,500/- per month, which is very much on a higher side and will cause great hardship to the petitioner.

This is, however, the second round of litigation in connection with the maintenance *pendente lite*. Initially, an order was passed on 2nd September, 2022 in the application under Section 24 of the 1955 Act filed by the opposite party/wife. In the said order a sum of Rs.7,000/- per month as maintenance and litigation cost of Rs.5,000/- was awarded. The petitioner came

before this Court challenging the quantum so fixed to be exorbitant. The petitioner's challenge was successful, however, on a different ground.

This Court by an order dated 8th February, 2023 passed in CO 138 of 2022 had set aside the order dated 2nd September, 2022 and had remanded back the matter principally on the ground that the court did not follow the procedure laid down in **Rajnesh vs. Neha and Another** reported in **2021 (2) SCC 324**. On remand the order impugned has been passed.

On a perusal of the impugned order it is explicit that the affidavit of assets and other documents required to be considered by the court in view of the guideline in **Rajnesh** (supra) has been duly followed.

The petitioner is admittedly a retired school teacher. He is presently getting a sum of Rs.32,158/- as pension. The petitioner retired from the services on 31st March, 2022. On his retirement, the petitioner received a sum of Rs.12,00,000/- on account of gratuity. The petitioner commuted 50% of his pension and received a sum of Rs.19,76,393/-.

The learned District Judge after considering the materials on record has come to the finding that the petitioner was capable of earning pension of Rs.50,250/- but is receiving Rs.32,158/- because he has commuted the same voluntarily which, therefor, cannot be said to be his inability to earn.

Looking the matter from a different angle, the sum of Rs.12,00,000/- and Rs.19,76,393/- makes up to Rs.32,00,000/- approximately. The petitioner is earning interest out of the said sum. The learned District Judge has also taken into account the sum of Rs.3,000/- received by the opposite party from her children.

After taking note of all these facts and figures, the learned Judge computed one-fourth amount of Rs.50,250/- which came to Rs.12,562/-. After deducting Rs. 3000/- from the said sum of Rs. 12,562/-, the learned Judge has directed payment of Rs.9500/- as a rounded up figure towards maintenance *pendenti lite* month by month along with the arrears from the date of the application under Section 24 of the 1955 Act.

I do not find any infirmity in the order passed by the learned District Judge being the order impugned herein.

The petitioner says that the petitioner has gifted an immovable property to his wife, being the opposite party and is paying the equated monthly installment (in short EMI) of about Rs. 25,000/- per month on account of repayment of the loan amount taken for acquiring the property which has been gifted to the wife. The petitioner also says that he has other expenses which, if taken note of, will show that the disposable income in

the hands of the petitioner is much less than Rs.50,292/- per month. This argument on behalf of the petitioner may be made in a desperate attempt to draw the sympathy of the Court to reduce the amount of maintenance when these documents were never placed before the learned District Judge, despite opportunity being given to the petitioner at the time of hearing of the application under Section 24 of the 1955 Act.

In view of the findings in ***Union of India vs. Ibrahim Uddin and Anr.*** reported in **2012 (8) SCC 148**, it is now settled provision that even an appellate Court should not travel outside the record of the lower Court and cannot take any evidence in appeal. The appellate court is also not empowered to supplement the evidence to fill up the lacunae. The only departure therefrom is the provision under Order 41 Rule 27 of the Code of Civil Procedure, 1908. The said provision has to be also cautiously applied as the appellate Court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Even inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of the pleader or the negligence of a pleader or that the party did not realize the importance of a document does not constitute a substantial cause to permit adducing of additional evidence. The jurisdiction exercised under Article 227 of the Constitution of India

may not be the appellate jurisdiction but a superintending jurisdiction in respect of the district judiciary. Even then, the ratio laid down in Ibrahim Uddin (supra) has to be considered by the High Court being a superior forum while hearing a revisional application in respect of an order against which there is no specific appeal provision.

Even otherwise, Rs.9,500/- for an aged lady whose medical expenses may be increasing with the advancement of age and keeping in mind the present market condition, I do not find the same to be harsh or is likely to cause hardship to the petitioner.

In the aforesaid facts and circumstances, the revisional application being C.O. 150 of 2023 fails and is accordingly dismissed, however, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Arindam Mukherjee, J.)