

19.02.2025
Court No. 06
Item No. 30
Cp

C.O. 174 of 2025

Saurav Jaiswal
Vs.
Kavita Jaiswal

Mr. Soumik Dey
Mr. Subhomoy Paul
Ms. Tania Ghosh
Ms. R. Das

.....for the petitioner.

Ms. Debasree Dhamali
Mr. Sibojyoti Chakraborti
Ms. Riya Ghosh

.....for the opposite party.

Affidavit of service is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the husband in a suit for divorce under the Hindu Marriage Act and is directed against an order dated December 4, 2024, passed by the learned Additional District Judge, Fast Track, 3rd Court, Barasat in Misc. Case No. 398 of 2022.

By the order impugned, the learned Trial Judge directed the petitioner herein to pay a sum of Rs.10,000/- per month to the wife/opposite party as alimony pendente lite from the date of filing of the said Misc. Case till the disposal of the Matrimonial Suit.

Learned advocate appearing on behalf of the petitioner submits that the wife has an independent source of income which was not considered by the learned Trial Judge while passing the impugned order.

Per contra, learned advocate appearing for the wife/opposite party submits that at an earlier point of time the opposite party herein was running a business but the same has been closed down. She submits that at present the wife has no independent source income. She further submits that the opposite party herein is a student.

After going through the order impugned, this Court finds that the learned Trial Judge took note of the fact that the wife was working in a beauty saloon but while fixing the alimony pendente lite the learned Trial Judge did not consider the income of the opposite party from such business.

In view thereof, this court is of the considered view that while fixing the alimony pendente lite the learned Trial Judge ought to have arrived at a specific finding either that the opposite party is having no independent income or that she is earning some amount. That would be a relevant fact for fixing the alimony pendente lite. Since such aspect was not considered by the learned Trial Judge, this Court is of the considered view that the impugned order is liable to be set aside only on that ground.

Hence, the order dated December 4, 2024, passed by the learned Additional District Judge, Fast Track, 3rd Court, Barasat in Misc. Case No. 398 of 2022 stands set aside.

The Misc. Case No. 398 of 2022 is restored to the file of the learned Additional District Judge, Fast Tract, 3rd Court, Barasat. Parties will be at liberty to approach the learned Trial Judge for fixing a date of hearing of the said Misc. Case. The learned Trial Judge is requested to dispose of the said Misc. Case as expeditiously as possible preferably on or before the end of April, 2025.

C.O. 174 of 2025 stands disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date, upon compliance of usual formalities.

(HIRANMAY BHATTACHARYYA, J.)