

D/L- 27
27/03/2025
Ct. No.-6
Aritra

C.O. 1075 of 2025

Pritam Kumar Das
Vs.
Mou Das (nee Kundu)

Mr. Subham Chatterje
Mr. Rajib Mullick
Ms. Sonia Mukherjee
...for the petitioner

Ms. Sudeshna Basu Thakur
Ms. Banani Bhattacharya
....for the opposite party

Affidavit of service filed in Court today is taken on record.

This application under Article 227 of the Constitution of India is at the instance of the husband and is directed against an order dated July 10, 2024 passed by the learned Additional District Judge, 1st Court, Alipore in Miscellaneous Case No.608 of 2018 arising out of Matrimonial Suit No.2915 of 2017.

By the order impugned, the miscellaneous case under Section 36 of Special Marriage Act praying for alimony *pendente lite* was disposed of by the learned Trial Judge by directing the petitioner/husband to pay a sum of Rs.10000/- per month for the wife and the minor son with effect from date of filing of the case that is from October 4, 2018.

The learned advocate appearing for the petitioner submits that at the time when the miscellaneous case

was being heard, the petitioner was unemployed. However, after the passing of the impugned order, the petitioner claims to have got an employment and his monthly remuneration is only Rs.11500/- per month. He submits that it very difficult for the petitioner to pay alimony at the rate directed by the learned Trial Judge.

The learned advocate appearing for the opposite party submits that the learned Trial Judge after considering the materials on record rightly directed the husband/petitioner to pay the alimony at the rate of Rs.10000/- per month.

Heard the learned advocates for the parties and perused the materials placed.

It is not in dispute that the parties filed their affidavit of assets and liabilities as well as other documents in terms of the direction of the Hon'ble Supreme Court in the case of **Rajnish vs. Neha & Anr.**, reported at **(2021) 2 SCC 324**.

It is also not in dispute that the son is at present aged about 8 years and is studying in a school. The son is residing with the opposite party herein.

No materials have been produced to show that the opposite party has independent income of her own.

The learned Trial Judge after taking into consideration the decision of the Hon'ble Supreme Court in the case of **Rajnish vs. Neha & Anr.**, reported at **(2021) 2 SCC 324**, the decision of this Hon'ble Court in

the case of **Ashrukana Das vs. Raj Kumar Das**, reported at **2016 (1) CLJ 383** and in the case of **Suhan Basu vs. Indrita Basu**, reported at **2020 (2) DMC 376** arrived at a factual finding that the wife/opposite party herein has been able to put forward a strong *prima facie* case in support of her prayer under Section 36 of the Special Marriage Act. The learned Trial Judge also took note of the observations made by the Hon'ble Supreme Court in **Rajnesh (supra)** with regard to the criteria for determining the quantum of maintenance.

The learned Trial Judge after applying the criteria laid down by the Hon'ble Supreme Court for determining the quantum of maintenance also kept in mind that the amount of compensation awarded should neither be oppressive for the paying party nor drive the recipient to penury. The learned Trial Judge after taking note of the reasonable needs of the wife and the compelling needs of the child and also that the opposite party herein has no independent source of income as well as the financial capacity of the husband/petitioner herein and the actual income and the reasonable expenses fixed the quantum of maintenance at Rs.5000/- per month for the wife and Rs.5000/- per month for the minor child.

Considering the present day price index and the respective needs of the wife and the minor son, who is a school going child of the parties, to the mind of this

Court, the quantum of alimony awarded by the learned trial judge cannot be said to be excessive.

The learned Trial Judge after considering the materials on record and applying the law laid down by the Hon'ble Supreme Court as well as this Court arrived at a quantum of maintenance and for such reason this Court is not inclined to interfere with the amount of maintenance fixed by the learned Trial Judge.

This Court is, however, inclined to interfere with the cost of litigation awarded by the learned Trial Judge. The petitioner shall pay a litigation cost of Rs.5000/- on or before April 30, 2025.

The order impugned is modified only to the extent as indicated above.

CO 1075 of 2025 stands disposed of accordingly.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)