

February 19, 2025
Sl. No.24
Court No.6
s.biswas

CO 1450 of 2024

Sri Indrajit Majumdar
vs.
Smt. Anjana Majumdar

Mr. Bratin Kumar Dey
Mr. Joydeep Das

... for the petitioner

Mr. Siddhartha Sarkar

... for the opposite party

The order dated 11th March, 2024 passed by the learned Additional District Judge, Fast Track 5th Court at Barast, District North 24 Parganas in Misc. Case No.84 of 2023 arising out of Matrimonial Suit No.789 of 2018 is under challenge in this application under Article 227 of the Constitution of India at the instance of the husband.

The petitioner husband filed a suit for dissolution of marriage under Section 27 of the Special Marriage Act being Matrimonial Suit No.789 of 2018. The opposite party herein filed an application under Section 36 of the Special Marriage Act praying for alimony pendente lite which was registered as Misc. Case No.84 of 2023.

Learned advocate appearing for the petitioner submits that the learned trial Judge fixed the amount of alimony pendente lite of Rs.25,000/- per month which is excessive considering the income of the petitioner herein. He further submits that the petitioner did not get any opportunity to contest the misc. case.

Per contra, learned advocate appearing for the opposite party submits that the petitioner was directed to pay a sum of Rs.11,000/- in a proceeding under the provision of Domestic Violence Act and the same was subsequently reduced to Rs.9000/- in an appeal arising out of the said order. He further submits that the petitioner herein did not pay the said amount and the opposite party was compelled to file an execution case.

Heard the learned advocates for the parties and perused the materials placed. It reveals from the record that the summons in connection with the misc. case was served upon the petitioner on 4th July, 2023 and the petitioner was represented by the learned advocate. Thereafter on 10th August, 2023, the petitioner herein was found absent without any steps and he was directed to showcause as to why the misc. case will not proceed ex parte against him. It has been recorded in the order impugned that the petitioner herein was found absent without any steps and no showcause was filed by him. Therefore, this court is of the considered view that the learned trial Judge was right in proceeding with the hearing of the misc. case ex parte.

It further appears from the record that the learned trial Judge took into consideration that the petitioner herein is a Central Government employee

in BSF and he is the owner of landed property and earns Rs.70,000/- per month.

Taking into consideration the fact that there are two children out of the wedlock, the learned trial Judge fixed the alimony pendente lite for the wife/opposite party herein and to children at the rate of Rs.25,000/-.

This court finds that the learned trial judge applied the correct legal tests while fixing the amount of alimony pendente lite. The amount fixed by the learned judge cannot be said to be excessive.

However, it is equally settled that while directing payment of alimony, an amount directed to be paid to the wife as maintenance in other proceedings have to be adjusted.

It is not in dispute that the petitioner is obliged to pay a sum of Rs.9000/- on account of maintenance as per the order under the Domestic Violence Act. Such amount ought to have been adjusted while fixing the amount of alimony pendente lite.

This court, therefore, directs that the petitioner shall pay the alimony pendente lite at the rate fixed by the learned trial Judge after adjusting the amount of maintenance fixed under the provisions of the Domestic Violence Act. The order impugned stands modified only to the extent indicted hereinabove.

With the above observation and direction, CO 1450 of 2024 stands dispose of. There shall be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)