

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 2377 of 2022

With

IA No. CAN 1 2023

Ayan Sen

Vs.

Smt. Smita Nath

For the petitioner

:Mr. Piyush Chaturvedi, Adv.
Mr. Subhojit Saha, Adv.
Mr. Somesh Ghosh, Adv.

For the Opposite Party

:Mr. Ujjani Chatterjee, Adv.
Mr. Soham Sen, Adv.

Last Heard On

:18.11.2024

Judgement On

:08.01.2025

Bibhas Ranjan De, J. :

1. The present revision application has been filed by the petitioner challenging the legality and correctness of the

impugned order being no. 28 dated 29.06.2022 passed by the Ld. Additional District Judge, 10th Court at Alipore in connection with Misc. Case no. 230 of 2020 arising out of Matrimonial Suit No. 3004 of 2018.

Background:-

2. The said Matrimonial Suit being no.3004 of 2018 was instituted at the behest of the petitioner herein/husband against respondent herein/wife under Section 27(1) (d) of the Special Marriage Act, 1954 (hereinafter referred to as Act of 1954) with a prayer for a decree of divorce thereby dissolving the marriage by and between the parties which was solemnized on 20.01.2015 under the Special Marriage Act.
3. In the said suit the respondent /wife filed an application under Section 36 for alimony pendente lite praying for a monthly maintenance of Rs. 1,00,000/- per month which was duly objected by the petitioner herein. Upon perusal of the pleadings exchanged, the Trial Court directed the parties to file an affidavit-of-assets in terms of the directions passed by the Hon'ble Apex Court in the case of ***Rajnish Vs. Neha*** reported in ***(2021) 2 SCC 324***. Accordingly, both the parties filed their respective affidavits and after thorough perusal, the Ld. Trial Court was pleased to hold that the respondent herein/wife is

entitled to receive Rs. 35,000/- as alimony pendente lite per month and in addition to that she will get Rs. 30,000/- lumpsum as litigation cost.

4. Being aggrieved by and dissatisfied with the said order, the petitioner has preferred this application by invoking Article 227 of the Constitution of India.

Arguments advanced:-

5. Ld. Counsel, Mr. Piyush Chaturvedi, appearing on behalf of the **petitioner/ husband** by relying on the affidavit of assets filed by the respondent/wife has submitted that the opposite party could only justify claim of Rs. 20,000/- per month against her actual claim of Rs. 1,00,000/- per month as alimony pendente lite. Therefore, the glaring inconsistency in the claims set forth in the petition and affidavit of assets would make it crystal clear that the claim made by the respondent/wife in the application under Section 36 of the Act of 1954 is absolutely frivolous and untrue. It is only made with an ulterior motive to extort money from the petitioner.
6. Mr. Chaturvedi has further contended that the demand of the respondent for a sum of Rs. 12,500/- as maintenance for her mother is completely untenable as she has an independent

source of income of her own and moreso Section 36 of the Act of 1954 only specifies that the spouse can claim for her own maintenance and not on account of her mother.

7. Before parting with, Mr. Chaturvedi has alleged that the respondent/wife has completely suppressed the fact that she is gainfully employed since the year 2019 and has an approximate income of Rs. 25,000/- per month which mixed the order impugned completely erroneous.
8. In support of this contention, he has relied on the Case of **Rajnesh** (supra) wherein he has specifically relied on paragraph 65 which runs as follows:-

“65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the court concerned, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.”

9. Per contra, Ld. Counsel, Ms. Ujjani Chatterjee, appearing on behalf of the **opposite party /wife** by refuting the plea raised by the petitioner that the wife only requires Rs. 20,000/- per month as maintenance pendente lite, has stated that the concept of ‘alimony pendente lite’ does not contemplate mere

survival of the wife but in order to maintain the same status as she enjoyed at her matrimonial home.

10. In support of the specific amount of claim demanded by the wife/opposite party herein, she has procured public records of the petitioner's position as director in at least 3 companies which have been disclosed in the affidavit of opposition filed by the respondent herein. Ms. Chatterjee has further relied on the contents of affidavit of assets submitted by the petitioner herein wherein he admitted that he is engaged in the business of shipping and logistics.

11. With regard to the claim of the petitioner that the respondent has a monthly income of Rs. 25,000/- per month, Ms. Chatterjee has highlighted the fact that no supporting documents has been annexed in the affidavit by the petitioner in support of this allegation. In addition to that, she has further alleged that the petitioner has constantly defaulted in making payment of the amounts as directed in the order impugned and therefore the total outstanding as of October, 2024 stands at Rs. 14,37,000/-

12. Therefore, Ms. Chattejee has tried to make this Court understand that the order impugned suffers from no perversity at all and as a sequel it requires no interference.

13. In support of her contention, she relied on the case of ***Kiran Jyot Maini vs. Anish Pramod Patel*** reported in **2024 SCC OnLine SC 1724**, wherein Hon'ble Apex Court dealt with determination of quantum of permanent alimony.

14. She has specifically relied on paragraph 24 of the case of ***Kiran Jyot Maini*** (supra) which stands as follows:-

"24. In Vinny Paramvir Parmar v. Paramvir Parmar this Court held that there cannot be a fixed formula or a straitjacket rubric for fixing the amount of permanent alimony and only broad principles can be laid down. The question of maintenance is subjective to each case and depends on various factors and circumstances as presented in individual cases. This Court in the above judgment stated that the courts shall consider the following broad factors while determining permanent alimony - income and properties of both the parties respectively, conduct of the parties, status, social and financial, of the parties, their respective personal needs, capacity and duty to maintain others dependant on them, husband's own expenses, wife's comfort considering her status and the mode of life she was used to during the subsistence of the marriage, among other supplementary factors. This was further reiterated by this Court in Vishwanath Agrawal v. Sarla Vishwanath Agrawal, while observing that permanent alimony is to be granted after considering largely the social status, conduct of the parties, the parties' lifestyle, and other such ancillary factors."

Analysis:-

15. At the very outset, I would like to discuss the observation made in paragraph no. 65 by the Hon'ble Apex Court in ***Rajnesh*** (supra) which has been duly reproduced above.

16. The basic nature of maintenance pendente lite envisaged under Section 36 of the Act of 1954 is basically temporary in nature. In my opinion, the basic object behind grant of such interim maintenance is to provide to a wife in matrimonial proceedings so that during the pendency of the proceedings the wife can maintain herself and also have sufficient funds to carry on the litigation and not unduly suffer in the conduct of the case for want of funds. The grant of this kind of maintenance is based on the principle of **equistatus** and the respect that the wife would have enjoyed if she continued to leave with her husband.

17. Therefore, the determination of maintenance pendente lite should be specifically decided upon careful scrutiny of the pleadings as well as the affidavits of disclosure of assets and liabilities filed by the parties. In the case at hand, a bare perusal of the affidavit of assets filed by the petitioner/husband indicates that he is admittedly involved in the business of shipping and logistics. Whereas, the opposite party/wife apparently does not have the necessary means to support her sustenance and maintain the same status and dignity of her husband. In this connection, the petitioner has raised an argument that the opposite party has time and again

altered her claim in respect of the pleadings as well as the affidavit of assets. In my opinion, this argument has got no validity as in the affidavit of assets the opposite party only disclosed about her general monthly expenditure and moreover the quantum is to be determined only by the Competent Court after taking into account all the necessary relevant factors.

18. According to the affidavit-of-assets, there is a sharp disparity in the financial capacity of the parties to this application. In this regard, it would be pertinent to discuss about the plea raised by the petitioner regarding employment status of the opposite party herein/wife. The petitioner has apparently come up with a report of some private investigator wherein it was disclosed that she is employed at 'Tulipian's Pre & Primary School' with a monthly earning of Rs. 20,000-25,000/- (approx). But in my opinion these findings cannot be taken into account at this juncture until and unless it is duly substantiated after extensive trial in terms of Rule of Admissibility.

19. It is no more *res integra* that the Courts while determining the amount of maintenance have to consider the following conditions which are as follows:-

- The social and economic status of the husband and wife;
- The basic needs of the wife and children (if any) in the future;
- Qualification and employment of both parties;
- Reasonable wants of the claimants;
- Sources of income and assets;
- The standard of living of the wife while living at her in-laws' house;
- The amount should aid the applicant to leave in a similar life style as she would have enjoyed in her matrimonial home;
- What will be the financial status of the husband, his earning and other responsibilities along with the maintenance allowance?

20. In light of the aforesaid parameters if the same has to be applied in the case at hand, a careful perusal of the affidavit-of-assets filed by the petitioner herein would crystallize the fact that the petitioner is engaged in the business of shipping and logistics. In addition to that, the petitioner also takes assistance of 9 (nine) employees which clearly indicates that the petitioner is running a business in a large scale. Therefore, in my view, the Ld. Trial Judge after scrutinizing the affidavit-

of-assets justly recorded his observation which does not require any sort of interference at this stage.

21. In this regard, now, I would like to discuss the argument advanced on behalf of the respondent/wife with regard to the fact that the payment of interim maintenance is not being done in accordance with the terms and conditions of the order impugned. If that is the case, I would request the Ld. Trial Judge to inquire this issue properly and if after inquiry it is found that the petitioner is not making timely payment then the Ld. Trial Judge is to make sure that the impugned order is complied with preferably within 4 (four) weeks from date of communication of this Order.

22. With the aforesaid observation, the instant civil revision application being no. C.O. 2377 of 2022, stands dismissed.

23. However, I would like to make it abundantly clear that any observation made hereinabove should not stand in the way of future adjudication of the permanent alimony whatsoever.

24. Connected applications, if there be, also stand disposed of accordingly.

25. Interim order, if there be, also stands vacated.

- 26.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 27.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]