

30.1.2025
54
Ct. no. 237
sb

CO 3840 of 2024

Subha Ranjan Sen Sharma
Vs.
Debarati Sen Sharma

Mr. Anup Kanti Poddar
Mr. Soham Dutta
Ms. Anjali Shaw ...for the Petitioner

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder ...for the Opposite party

This application has been preferred against order no. 42 dated 17.8.2024 passed by learned Additional District Judge, 10th Court, Alipore.

The opposite party/wife earlier filed an application for moneytary relief under the provision of Protection of Women from Domestic Violence Act, wherein the Trial Magistrate granted maintenance of Rs. 3,000/- per month towards maintenance of minor child and Rs. 3,000/- per month for the wife/opposite party herein.

Being aggrieved by that order, the wife/opposite party preferred an appeal being Criminal appeal no. 217 of 2017 and the Appellate Court disposed of the said appeal modifying the maintenance amount, to be

paid by the husband/petitioner is Rs. 9,000/- per month for wife and Rs. 9,000/- per month for the child instead of Rs. 3,000/- per month as awarded by the Trial Court.

The impugned order arises out of an application under Section 36 of the Special Marriage Act which was filed in connection with a separate divorce proceeding by the wife/opposite party herein, where the wife has prayed for dissolution of marriage and also prayed for pendente lite maintenance which has been registered as Misc. Case no. 44 of 2021. In the said Misc. case, the court below by the impugned order, has directed to pay maintenance of Rs. 30,000/- per month from the date of filing of the Misc. case to the petitioner.

The grievance ventilated herein by the petitioner is that learned court below did not mention in the said order that the amount of maintenance which the petitioner is paying in terms of aforesaid order passed in earlier Domestic Violence Act proceeding, shall be subject to maintenance amount passed in the impugned order in connection with application under Section 36 of the Act of 1954.

Learned counsel for the opposite party raised objection contending that the petitioner/husband has sufficient means to pay both the amounts and

accordingly the order impugned does not call for interference.

Having heard the learned counsel for the parties, I find that when the court below has directed for the payment of pendente lite maintenance amount of Rs. 30,000/-, he did not observe that such amount is payable in addition to maintenance what has been passed in earlier proceeding.

Normally unless otherwise directs by the Magistrate, the amount awarded in the proceeding under the Domestic Violence Act towards maintenance is adjustable against the amount awarded in the matrimonial proceeding. As such, court below ought to have indicated in the impugned order that the petitioner shall pay the amount towards maintenance whichever is higher amount awarded among the two proceedings.

In such view of the matter, the present application being C.O. 3840 of 2024 is hereby disposed of with an observation that the maintenance pendente lite as awarded by the court below amounting to Rs. 30,000/- in Misc. Case no. 44 of 2021, shall include the maintenance, already awarded to the wife/opposite party herein in Criminal Appeal no. 217 of 2017.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)