

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 4188 of 2023

Koustav Dasgupta
Vs.
Smt. Diposhree Dhar Dasgupta

Mr. Arijit Bardhan
Mr. Vivekananda Bose
Mr. Rajdeep Majumder
Mr. Ritikanta Pal
... For the petitioner

Mr. Amitabha Ghosh
Mr. Asish Santra
Ms. Nabanita Chatterjee
Ms. Arpita Dhar
... For the opposite party

1. This revisional application has been filed assailing the order dated 2nd September, 2023 passed in connection with Misc. Case No.119 of 2021 wherein the learned Additional District Judge, 10th Court, Alipore, South 24-Parganas disposed of an application under Section 36 of the Special Marriage Act, 1954 promulgating a direction upon the petitioner/opposite party in connection with Misc. Case No.119 of 2021 to pay Rs.50,000/- per month as maintenance *pendente lite* along with litigation cost of Rs.1,00,000/-.

2. Learned counsel on behalf of the petitioner has drawn my attention to the order impugned and contended that the learned Judge never ascertained the income of the petitioner/husband in spite of the fact that

bank statement was filed by *Firisti* before the learned Court. It has been further contended that all necessary documents have been annexed with the affidavit of assets but the learned Judge did not consider these documents, including the bank statement showing the income of the petitioner/husband.

3. Per contra, it is submitted by the learned counsel appearing on behalf of the opposite party/wife that nowhere in the affidavit of assets the petitioner/husband disclosed his income.

4. However, on perusal of the order impugned, it is found that the learned Judge observed that no bank statement was submitted by the opposite party/petitioner herein and, therefore, the learned Judge recorded his finding that the petitioner/husband suppressed his income. But nowhere in the order impugned the learned Judge recorded any particular income or slab of income of the petitioner/husband before ascertaining the quantum of alimony which is *sine qua non* for disposal of an application under Section 36 of the Special Marriage Act, 1954.

5. From the impugned order, I do not find any specific observation regarding independent income of the opposite party/wife. It is also *sine qua non* to promulgate before passing any order for alimony. Therefore, the learned Judge disposed of the application under Section 36 of the Special Marriage

Act, 1954 without following the mandates of the provision itself as well as the principle laid down by the Hon'ble Apex Court.

6. Regard being had to the above, the order impugned is not sustainable in the eye of law and as a sequel, the order dated 2nd September, 2023 stands set aside.

7. The learned Additional District Judge, 10th Court, Alipore, South 24-Parganas, is directed to re-hear the application under Section 36 of the Special Marriage Act, 1954 in accordance with law, as it has been observed hereinabove and also after giving an opportunity of hearing to the parties to this application.

8. However, learned counsel appearing on behalf of the petitioner/husband undertakes, on instruction, to pay Rs.50,000/- per month till the disposal of the application under Section 36 of the Special Marriage Act, 1954.

9. Learned Judge is further requested to dispose of the application under Section 36 of the Special Marriage Act, 1954 preferably within eight weeks from the date of communication of this order without allowing any unnecessary adjournment to any of the parties to the case.

10. With the aforesaid observations, the revisional application, being CO 4188 of 2023, stands disposed of.

11. Learned counsel appearing on behalf of the parties are at liberty to bring this order to the notice of the learned Additional District Judge, 10th Court, Alipore, South 24-Parganas, forthwith.

12. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

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

(Bibhas Ranjan De, J.)