

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 4205 of 2023

Souvik Basak
Vs.
Mahua Basak

Mr. Nilendra Narayan Ray
... For the petitioner

Mr. Ujjal Ray
Mr. Ivan Roy
Mr. Abdur Rohim
... For opposite party

1. Challenge in this revisional application is the order no.20 dated 7th October, 2023 passed in connection with Mat. Execution No.02 of 2020 wherein the learned Additional District Judge, 1st Court, Barasat, North 24-Parganas, refused the plea of exemption of payment of maintenance *pendente lite* during the period from February 2016 to October, 2018 on the ground of living together.

2. Initially, one matrimonial suit under Section 13 of the Hindu Marriage Act, 1955 was filed at the instance of the petitioner/husband, which was registered as Mat. Suit No.114 of 2013, wherein the opposite party/wife entered appearance and filed an application under Section 24 of the Hindu Marriage Act, 1955. The application under Section 24 of the Hindu Marriage Act was disposed of by the learned Additional District Judge, 1st Court, Barasat, directing the petitioner/husband to

pay a consolidated amount to the tune of Rs.10,000/- per month as maintenance towards the opposite party/wife and her daughter along with the litigation cost to the tune of Rs.10,000/-. That order was assailed before this Court in CO 3422 of 2015 wherein Hon'ble Justice Harish Tandon (as His Lordship then was) was pleased to pass an order dated 15th September, 2015 thereby not interfering with the order passed by the learned Additional District Judge, 1st Court, Barasat.

3. Due to non-payment of maintenance *pendente lite*, the order was put into execution, which was registered as Mat. Execution No.02 of 2020, wherein the impugned order was passed by the learned Additional District Judge, 1st Court, Barasat.

4. Learned counsel appearing on behalf of the petitioner/husband has submitted that during the period from February, 2016 till October, 2018, the opposite party/wife was residing with the petitioner/husband and for that period, the petitioner/husband is not liable to pay any maintenance *pendente lite*. It is further submitted that after the order was passed by this Court in CO 3422 of 2015, the opposite party/wife again started her matrimonial life with the petitioner/husband.

5. In support of the contention, Mr. Nilendra Narayan Ray, learned counsel appearing on behalf of the petitioner, has referred to paragraph VIII of the application under Section 12 of the Protection of Women

from Domestic Violence Act, 2005 (in short, '2005 Act') filed by the opposite party/wife before the Court of the learned Chief Judicial Magistrate, Barasat and tried to make this Court understand that during the period mentioned above, the petitioner/husband used to maintain the opposite party/wife and her daughter.

6. Per contra, the learned counsel appearing on behalf of the opposite party/wife has also relied on paragraph VIII of the application under Section 12 of the 2005 Act, which was registered as C. Case No.2376 of 2021, pending before the learned Chief Judicial Magistrate, Barasat.

7. On careful perusal of the application as well as the entire paragraph VIII of the application under Section 12 of the 2005 Act, I find that though the opposite party/wife started residing with her husband/petitioner herein but he did not provide all types of maintenance to the wife/opposite party herein and her minor daughter. Therefore, with the assistance of this statement made in paragraph VIII of the application under Section 12 of the 2005 Act, in my opinion, the petitioner/husband cannot make any prayer for exemption of payment of maintenance *pendente lite* during the period from February 2016 to October, 2018.

8. In the aforesaid view of the matter, I find hardly any scope to interfere with the order impugned in this revisional application.

9. Accordingly, the instant revisional application stands dismissed.

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

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

(Bibhas Ranjan De, J.)