

JPD. 11.
July 31, 2025.
MNS.

CALCUTTA HIGH COURT
In The Circuit Bench at Jalpaiguri
Appellate Side

CO No. 111 of 2025
+
CAN 1 of 2025

Raju Sarkar
Vs.
Moumita Sarkar

Mr. Sudipto Kr. Mazumder, Ld. Snr. Adv.,
Mr. Mayank Bhandari

... for the petitioner.

Mr. Rahul Misra,
Mr. Deborshi Dhar,
Ms. Taniya Bhowmik

...for the opposite party.

Re: CAN 1 of 2025 (Section 5)

1. Upon hearing learned counsel for the parties, since sufficient reasons for the delay in preferring the revisional application have been made out, CAN 1 of 2025 is allowed, thereby condoning the delay in filing the same.
2. There will be no order as to costs.

Re: CO No. 111 of 2025

3. Now, the revisional application is taken up for hearing.
4. Learned senior counsel appearing for the petitioner contends that the

learned trial Judge, while granting an alimony of Rs.10,000/- per month in favour of the opposite party / wife, refused to take into account the specific allegation of the petitioner, in his affidavit-of-assets and the written objection to the alimony application, that the opposite party / wife is the owner of a gymnasium, having sufficient income. In support of the same, certain printouts of screenshots from the Facebook profile of the opposite party / wife are shown to the court, which apparently indicate that the name of the opposite party is appearing as the owner of the gymnasium and her phone number is given in the signboard of the gymnasium.

5. Learned senior counsel further argues that since the learned trial Judge was of the opinion that although affidavit-of-assets was filed by the petitioner, no supporting documents were filed, an opportunity ought to have been given to the petitioner to furnish such supporting documents instead of drawing adverse inference outright on such technical ground and passing the impugned order.
6. Learned senior counsel further argues that, if given an opportunity, the petitioner would be

able to substantiate his income furnished in the affidavit-of-assets and written objection as well as furnish other documents in support of his affidavit-of-assets.

7. Learned counsel for the opposite party submits that the quantum of income disclosed by the petitioner in the court below is not credible.
8. The petitioner has stated in the trial court in his affidavit-of-assets that he is doing a part-time job as an “Event Manager”, which is not commensurate with the monthly income disclosed by him.
9. Moreover, it is contended that the learned trial Judge did not commit any jurisdictional error in drawing adverse inference against the petitioner due to non-production of any supporting documents to his affidavit-of-assets in line with the judgment of *Rajnish Vs. Neha*.
10. Upon hearing learned counsel for the parties, it transpires that the learned trial Judge, without giving an opportunity of furnishing further documents in support of the affidavit-of-assets of the petitioner, drew adverse inference outright against the petitioner.
11. It is well-settled that where a view is taken on a technical ground, which is curable, an

opportunity for rectifying such lacuna has to be given to the affected party.

12. Thus, this Court is of the opinion that the learned trial Judge ought to have granted at least one opportunity to the petitioner to furnish cogent documents in support of his affidavit-of-assets in view of the learned trial Judge being of the opinion that merely due to absence of such documents, the averments made in his affidavit-of-assets were to be disbelieved.

13. On query of court, learned counsel for the opposite party submits that she has been granted maintenance to the tune of Rs.1,500/- per month under Section 125 of the Code of Criminal Procedure, which is not being paid by the petitioner.

14. In view of the above, CO No. 111 of 2025 is disposed of by setting aside the impugned order, being Order No. 29 dated March 5, 2025 passed in Matrimonial Suit No. 74 of 2020 by the learned Additional District Judge, Fast Track Court at Siliguri, and remanding the alimony application to be re-heard and considered afresh by the learned trial Judge upon giving opportunity to both the parties to furnish further

documents, if they so deem fit, in support of their respective affidavits-of-assets /disclosures.

15. The learned trial Judge shall fix specific dates for such furnishing of documents by both parties and adjudicate the alimony application afresh upon consideration of such documents, if any furnished by the parties, and upon giving a further opportunity of hearing to both sides, preferably within an outer limit of two months from the date of communication of this order to the learned trial Judge.

16. However, the above order is subject to the pre-condition that the petitioner clears off all the arrear dues of maintenance in terms of the order passed in favour of the opposite party under Section 125 of the Code of Criminal Procedure within four weeks from date and thereafter goes on paying the current maintenance in terms of the said order.

17. In default of such payment within four weeks, regarding which the petitioner shall satisfy the learned trial Court by furnishing appropriate receipts or other documents, the present order shall stand automatically recalled without further reference to this Court and it will be deemed that CO No. 111 of 2025 stands dismissed.

18. There will be no order as to costs.

19. The parties as well as the learned Trial Judge shall act on the server copy of this order, without insisting upon prior production of certified copy thereof, for the purpose of compliance.

(Sabyasachi Bhattacharyya, J.)