

D/L 47
07.01.2025
Court. No. 3
Aritra

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Appellate Side**

CO 224 of 2024

**Rina Chowdhury @ Rina Gupta
Vs.
Sri Ajay Prasad**

Mr. Hillol Saha Poddar

....for the petitioner

1. The affidavit of service as filed today is taken on record.
2. None appears on behalf of the opposite party despite service.
3. In this revisional application as filed under Article 227 of the Constitution of India the order No.17 dated 20/06/2024 as passed in Misc. Case No.09 of 2023 arising out of Mat Suit No.352 of 2022 by the learned Additional District Judge, Fast Track Court, Siliguri is impugned.
4. By the impugned order learned Trial Court dismissed the petitioner's/wife application for alimony *pendente lite* and cost of litigation as filed under Section 24 of the Hindu Marriage Act, 1955, in the said Mat Suit which was registered as Misc. Case No.09 of 2023.
5. In support of the petition under consideration Mr. Saha Poddar, learned advocate appearing on behalf of the petitioner/wife at the very outset draws attention of this Court to the copy of the plaint as filed in Mat Suit No.352 of 2022, the copy of the application under Section 24 of

the Hindu Marriage Act, 1955 (hereinafter referred to as the 'said Act' in short), the affidavit of assets and liabilities as filed by the petitioner/wife as well as the copy of the examination-in-chief as filed by the petitioner/wife before the learned Trial Court. Drawing attention to the impugned order, Mr. Saha Poddar argued that learned Trial Court has committed serious error of fact and of law in not considering the unchallenged testimony of the petitioner/wife in its proper perspective. It is further contended by Mr. Saha Poddar that for no reason whatsoever learned Trial Court has failed to visualise that the present petitioner/wife and her two children require maintenance for their sustenance. It is further contended that learned Trial Court has also failed to visualise that the petitioner/wife having no independent income of her own is entitled to lead a life similar to the standard of her husband. It is further contended that learned Trial Court has failed to visualise that burden of proof of the income of the husband cannot be bestowed upon the wife since the same is within the special knowledge of her husband. It is thus contended that the instant revisional application may be allowed by setting aside the impugned order.

6. This Court has meticulously gone through the entire materials as placed before this Court including the order impugned. This Court has given its anxious consideration over the submissions of Mr. Saha Poddar, learned advocate. On careful consideration of the entire materials as placed before this Court it reveals that before the

learned Trial Court despite service of notice the opposite party/husband had chosen not to appear. From the averments as made by the petitioner/wife in her examination-in-chief before the learned Trial Court in the said Misc. case it would reveal that during her matrimonial tie the petitioner/wife was subjected to physical and mental torture at the hands of her husband and thus finding no other alternative she had to shift elsewhere in a rented accommodation. She categorically stated that even in her rented accommodation she was tortured at the instance of her husband.

7. It has been disclosed in her examination-in-chief that finding no other alternative her parents had purchased one landed property in Pradhan Nagar area and with the help of her parents she constructed a three storied building thereon where at present she is living with her two daughters.
8. On perusal of the affidavit of assets and liabilities as filed by the petitioner/wife it reveals that apart from the said three storied building she has got no independent income of her own. She has also categorically mentioned that her two daughters are residing with her.
9. On perusal of the certified copy of the impugned order it appears to this Court that the learned Trial Court for no reason whatsoever disbelieved the unchallenged testimony of the petitioner in absence of any contrary evidence. Though in the petition under Section 24 of the said Act as well as in her examination-in-chief as filed in Misc. Case

No.09 of 2023, the petitioner/wife has disclosed the income of her husband, learned Trial Court not only disbelieved such averments of the petitioner/wife but also the said Trial Court came to a finding that it is obligatory on the part of the petitioner/wife to prove the income of her husband. In considered view of this Court the finding of the learned Trial Court is totally erroneous since the income of a person is within the special knowledge of that person who earns and in the case in hand this Court is a considered view that the opposite party/husband never approached the learned Trial Court and even before this Court to substantiate that his income is much lower as has been stated by the petitioner/wife in her petition under Section 24 of the said Act.

10. This Court has reason to believe that the petitioner being the wife of the opposite party/husband has got some idea about her husband's income and avocation and thus learned Trial Court is not at all justified to disbelieve the unchallenged testimony of the petitioner/wife regarding her husband's income.
11. It further appears to this Court that the learned Trial Court has miserably failed to consider that it is the bounden duty of the opposite party/husband to maintain his two children and no materials have been placed before the learned Trial Court that the husband is maintaining his two children especially when the said two children of the petitioner and the opposite party are not ordinarily residing with the

opposite party/husband and on the contrary they are residing with the mother i.e., the petitioner/wife herein.

12. It is equally pertinent to mention herein that for the sake of argument even if it is accepted that the wife has some income but it cannot be overlooked that a wife has right to lead a life similar to the standard of her husband. Learned Trial Court has miserably failed to consider that aspect also.
13. Considering the entire circumstances as discussed hereinabove this Court thus finds sufficient merit in the instant revisional application. Accordingly the instant revisional application is hereby allowed.
14. Consequently, the impugned order No.17 dated 20/06/2024 as passed in Misc. Case No.09 of 2023 by the learned Additional District Judge, Fast Track Court, Siliguri stands hereby set aside.
15. Consequently, the petitioner's/wife application under Section 24 of the said Act stands hereby allowed.
16. The opposite party/husband is directed to pay alimony *pendente lite* at the rate of Rs.15000/- per month to the petitioner/wife for her maintenance and a further sum of Rs.10000/- (Rs.5000/- + Rs.5000/-) for the two daughters of the petitioner/wife with effect from April, 2023.
17. The alimony *pendente lite* as fixed by this Court is to be paid by the opposite party/husband by the 7th day of each succeeding month for which it becomes due.

18. The arrears of alimony *pendente lite* as fixed by this Court is to be paid in equal installment of Rs.15000/- each along with current maintenance till its liquidation.
19. The cost of litigation is assessed to the tune of Rs.15000/- which is to be paid by the opposite party to the petitioner in two equal installments and first such installment is to be paid by the last day of February, 2025 and the last such installment is to be paid by the last day of April, 2025.
20. With the aforementioned observation **CO 224 of 2024** is disposed of.
21. Department is directed to communicate this order to the learned Trial Court forthwith.
22. Learned Trial Court is hereby directed to expedite the trial of Mat Suit No.352 of 2022 and the said Court shall make an endeavor to conclude the same preferably within three months from the date of communication of this order.
23. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Partha Sarathi Sen, J.)