

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 1113 OF 2026

MAYA SARKAR ALIAS MITA SARKAR

VS.

SAMIR SARKAR

WITH

CO 1157 OF 2026

SAMIR SARKAR

VS.

MAYA SARKAR ALIAS MITA SARKAR

For the Petitioner in

CO 1153/26, and

CO 1157/26 in O.P.

: Ms. Deblina Lahiri, Adv.

Mr. Mrinmoy Chatterjee, Adv.,

For the Opposite

Party

: Mr. Rajdeep Bhattacharya, Adv.

Reserved On

: 08.06.2026

Judgement On

: 18.06.2026

Uploaded On

: 18.06.2026

CHAITALI CHATTERJEE DAS, J. :-

1. Both the Revisional applications are filed challenging the order passed by the 1st Additional District Judge at Alipore in Misc. Case 506 of 2025 arising out of Matrimonial Suit no. 9182 of 2015 dated 23.2.2026. By virtue of the said judgement, the Learned Court has allowed the prayer of the wife/ petitioner in C.O 1113 of 2026 in part and enhanced an amount of ₹7000 as alimony pendente lite. The wife has challenged the said judgement as she was not

satisfied with the quantum of enhancement, and on the contrary, the husband has come up before this court against the order of.

2. The fact of the case in both the cases in brief is that the parties got married on 14th July, 1994 according to Hindu rights and customs. The marriage was duly consummated and a male child was born on 8.1.1996. Subsequently, the marital discord cropped up between the parties. Lastly, a matrimonial suit was filed for dissolution of marriage for the decree of divorce being Mat Suit no. 9182 of 2015 before the court of learned District Judge at Alipore later on transferred to the court of learned 9th Additional District Judge Alipore. The wife filed an application under section 24 of the Hindu Marriage Act for alimony pendente lite and also under section 125 of the code of criminal procedure. Against the order passed in connection with both the proceeding a criminal revisional application was filed being CRR number 206 of 2017, where the Hon'ble Court awarded a monthly interim maintenance of ₹15,000 to the wife to be paid by the husband and accordingly, the husband is paying the said amount of maintenance.

3. On 5.9 2017, the Opposite Party/ wife filed petition under Section 151 of the Code of Civil Procedure, 1908 praying for stay of the matrimonial suit which got rejected and parties were directed to conclude the argument on the next date of hearing that is on 13.11.2017. On that day, another application under Section 151 of Code of Civil Procedure was filed for enhancement of alimony pendente lite from Rs. 15,000 per month to ₹20,000 per month. The learned Court after hearing both the parties rejected such application on 1.12.2017. On 11.10.2018, the case was transferred from the court of learned 9th

Additional District Judge at Alipore to the court of 7th Additional District Judge at Alipore. Application was filed under section 151 of CPC on 2.9.2019 by the wife, praying for payment of arrear alimony pendent lite and such petition was also rejected of not having jurisdiction with a cost of ₹1000 by the learned Court. Again, the said case was transferred from court of 9th Additional District Judge to learned 1st Additional District Judge at Alipore on 26.8.2019. Lastly, this instant application under section 24 of the Hindu Marriage Act was filed for enhancement and the learned Court passed the order in favour of the wife enhancing the amount from Rs. 15,000 to Rs. 21,000.

4. The learned Advocate representing the petitioner on behalf of the wife in CO 1113 of 2026, and the Opposite Party in CO 1157 of 2026 argued that the suit was filed long back in the year 2017 and the order of alimony pendente lite was passed of Rs. 15,000 way back in the year 2017, and till now the suit is pending. It is submitted that it is difficult to maintain herself who is an aged lady having several ailments to sustain with such paltry amount and Rs. 7000 has been increased by the learned Trial Court without considering the prayer made by the petitioner.. It is also argued that in the judgement of the Hon'ble Supreme Court in ***Rajnesh versus Neha reported in*¹** mandates the exchange of affidavit of disclosure of assets and liabilities which were never placed before the court as the order of alimony pendent lite was passed before the judgement and hence such exercise must be done by the court while calculating the amount of maintenance. It is the contention of the learned advocate that matter should be decided, considering the affidavit of assets and liabilities by the learned Trial Court. The ground taken by the husband that

¹ (2021) 2 SCC 324

his income is reduced being a pension holder of ₹60,300 is not correct as he has suppressed that 40% of the total pension has been commuted by the husband.

5. The submission made on behalf of the learned advocate representing the opposite party husband being the petitioner in the other revisional application, the only intention of the wife is to delay the suit, and therefore, as the matter was fixed for argument, she continuously filed miscellaneous causing delay in disposal of the original proceeding. The learned trial Court failed to consider that when ₹15,000 was allowed as maintenance as a formed by the Hon'ble Court. The petitioner husband was in service and had an income of ₹1, 00,000 per month, but presently he is a retired person drawing a pension of ₹60,300/. That the petitioner husband is also an aged person suffering from various old age ailments. It is the specific contention that against the order passed by the learned Magistrate in connection with a proceeding of granting maintenance when the revisional application was filed by the wife, the Hon'ble High Court considering the income of the husband as of ₹1, 00,000/- per month and the status of the parties passed such order of maintenance of ₹15,000 in the year 2017. After passing of almost 10 years when the husband got retired and is a pension holder, the amount of maintenance is enhanced to the tune of ₹7000, which caused serious hardship to the petitioner/ husband. It is further his contention that despite the order passed for expeditious disposal of the suit in the year 2022, the matter kept pending only on the ground of dragging the procedure on behalf of the wife. The learned Advocate draws the attention of this court to the various orders passed by this court on several occasions in Revisional applications filed in connection with

interlocutory applications taken out, mostly by the wife and lastly, she took the plea of suffering from severe knee problem when the matter was fixed for evidence and expressed her inability to climb to upstairs for adducing evidence. She prayed for appointment of advocate commissioner, which was turned down against which a Revisional application was filed and by an order dated 11.8.2025, this court directed secretary, District legal services, Authority, 24 Parganas South to make necessary arrangement to facilitate the petitioner wife so that she can adduce evidence from the ground floor of the legal aid building virtually, but till date she has avoided number of dates fixed for that purpose. It is further contended that the husband even intended to pay the amount required for such knee surgery and accordingly issued a cheque but till date the same has not been encashed. The learned Advocate relied upon the decision in **Rakhi Sadhukan versus Raja Sadhukan** reported at² that while Appeal was pending before the High Court, the interim maintenance was enhanced and there it was observed that factors to be taken into consideration for directing payment of maintenance which are very relevant.

6. Having heard both the learned counsel and going through the materials on record it transpires the matrimonial suit was filed in the year 2014 and the petition under Section 24 of Hindu Marriage Act, 1955 was filed on 19.9, 2014 and the said application was disposed of by awarding a monthly maintenance of ₹15,00 to the wife. The same order was challenged before High Court by the wife and on 28.4.2017, learned Coordinate Bench, considering the rival contention of the parties and the status of the parties, apart from basic

² 2025 SCC On Line SC 1259

necessities of food and lodging, the needs of an estranged woman was taken into consideration as well as the gross income of the husband as over ₹1,00,000 per month and held that the interim maintenance granted of ₹15,000 would be commensurate in the facts of the case, and the petitioner was directed to pay ₹15,000 per month as interim maintenance from the date of filing the application of the maintenance. Since thereafter, the suit kept pending and the husband filed a Revisional application being CO no. 2723 of 2022 for expeditious disposal of the matrimonial suit where a direction was given to the court to dispose of the same within 2023. Again on March 19, 2024, the Opposite Party/ wife aggrieved by an order dated September 30, 2023, rejected an application filed by the wife for recalling of P.W.1 was challenged before the High Court and the Hon'ble High Court directed the suit to be expedited and to be disposed of within six months from the date of communication of the order and accordingly disposed of the Revisional application. The wife again challenged before the Court and application for amendment of a written statement to incorporate the prayer for a decree of restitution of conjugal right by way of counter claim which was refused by the learned trial court and on 13.9.2024, learned Coordinate Bench while dismissing the Revisional application specifically held that a prayer for decree of restitution of conjugal rights by way of counterclaim under Section 23A of the Act of 1955 is a completely misconceived action. Learned Coordinate Bench further considered the long pendency of 10 years of the matter without any witness action and directed expeditious disposal of the suit. The suit was fixed for taking evidence and then the plea of the wife petitioner was for appointment of advocate commissioner as she was suffering from knee

problem, which was again turned down by the trial court and Revisional application being C.O. 2687 of 2025 was filed challenging the said order. This court gave her opportunity to adduce evidence virtually from the ground floor of the Alipore District & Sessions Judges Court, but till date such evidence has not been adduced and on 4.9.2025, the learned Court fixed 22.9.2025 for further evidence on 22.09.2025. The system management was found not to be ready and accordingly direct the matter to be fixed on 14.11.2025 and on 6.11.2025, the learned Additional Court directed DLSA to make necessary arrangement for taking evidence of D.W.1, but after that, the wife filed application for stay of the instant Mat suit for till disposal of Misc. 506 of 2025 and the date was shifted for hearing of such stay petition and for further evidence. The learned Trial Court directed the requisites to be filed on both ways once again in connection with the said Misc. Case without considering the fact that the proceeding alimony pendente lite was heard and disposed of earlier and hence there was no necessity put fresh requisite .

7. However, it is clear that the plea that was taken by the petitioner wife before the learned trial court for an appointment of Advocate Commissioner because of her knee problem, found not yet been materialised but she preferred an application for stay of the matrimonial suit during the pendency of the said Misc. Case .
8. The number of Revisional application filed before this court filed by the wife negates any financial constraint and she never took the assistance of Legal Aid Services on any such occasion. It is a fact that in ***Rajnish versus Neha (supra)*** the Hon'ble Apex Court discussed the criteria for determining quantum of maintenance. It was held that:-

“the objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.”

It was further held that:-

“the factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professional qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to her in our matrimonial home.....”.

9. In the instant case, it is an admitted fact that earlier considering all the parameters the amount of maintenance was granted affirmed by the High Court and she was enjoying such maintenance. It is undisputed that the husband is presently a retired pension holder and is drawing a pension of ₹60,300. Even if the contention of the learned Advocate of the wife is considered that he has commuted 40% of his pension amount, such amount without deduction would have been of approximately ₹1 lakh as submitted on his behalf. Long back in the year 2017, considering the income of the husband as of ₹1,00,000, the Coordinate Bench of this court decided the amount of interim maintenance as Rs 15,000/- . It further manifest the intention the

petitioner wife claimed that after long pendency of 10 years of the matrimonial suit and the order of maintenance granted in the year 2017, such amount to be considered in the light of the observation by **Rajneesh versus Neha (supra)** and prayer made before this court for passing necessary direction to determine the quantum of maintenance by filing Affidavit of Asset and liabilities.

10. The petitioner wife on the one hand is seeking enhancement of maintenance solely on the ground that the matrimonial suit is still pending ,while on the other hand her conduct demonstrate an intention to delay the disposal of the matrimonial proceeding itself .The said intention is evident from her application seeking stay of further proceedings in the Matrimonial suit until disposal of her second application under section 24 of the Hindu Marriage Act 1955. Therefore having herself sought for a stay of the matrimonial proceeding ,the petitioner wife cannot take advantage of the resultant delay and seek enhancement of maintenance merely on the ground of prolong pendency of the suit .So the delay caused by her own actions cannot be a valid basis for claiming additional financial relief .

11. There is no specific provision of enhancement of alimony pendente lite by filing a fresh application when the specific provision exists in the Cr.P.and presently BNSS. In a decision passed by the Hon'ble Supreme Court in **Kalyan De Chowdhury vs Rita De Chowdhury**³,it was observed that an application for modification of the order passed in section 24 application which was disposed of can be filed instead of filing a fresh application under section 24 of the Hindu Marriage Act and the purpose would have been subserved if the Learned Court could have converted such application under

³ 2017 SCC Online SC 440

Section 24 of Hindu Marriage Act as an application for modification of the earlier order passed. In the present case the wife filed a Misc. case for the second time for enhancement of such alimony pendente lite along with an application for stay of the matrimonial suit till disposal of such proceeding which clearly manifest the intention of the Opposite party wife to drag the proceeding. There is a provision for permanent alimony after the decree is passed in a matrimonial suit, but unless the suit is disposed of such provision cannot be invoked.

12. The Learned Court enhanced the amount considering the undeniable rise in cost of living and the petitioner's lack of independent income coupled with the previous date of order of maintenance but failed to consider that instead of taking recourse to appropriate forum she chose to file the application under section 24 of the Hindu Marriage Act for enhancement and also filed application for stay of the suit .The petitioner resides in the house of the opposite party and her son is an adult .Therefore considering all aspect of the matter and considering capacity of the husband being a retired pension holder this court is not inclined to agree with the order passed by the learned court of enhancing the maintenance to the tune of Rs. 7000/- per month by allowing an application under section 24 of Hindu Marriage Act for the second time . Hence the order needs to be modified.

13. Hence the revisional application filed by the husband being C.O. 1157 of 2026 is hereby allowed in part and the order passed by the Learned court enhancing maintenance is modified as to that extent that considering the age of the petitioner and she is suffering from various age old ailment the husband

is directed to bear the actual medical expenses of the petitioner as and when required subject to submitting all prescriptions and receipts.

14. C.O. 1113 of 26 is also hereby dismissed without cost.

15. The learned Court is once again directed to dispose of the suit following the directions passed by the Coordinate Bench on various occasion and the case flow management guidelines without granting any unnecessary adjournment to either of the parties.

16. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)