

(2012) 10 CAL CK 0003
In the Calcutta High Court

Case No : C.O. No. 1314 of 2012 with C.O. No. 1629 of 2012

Smt. Mayurakshi Basu (Nee Maitra)

APPELLANT

Vs

Sri Sandeep Basu
 Sri Sandeep Basu Vs Smt.
Mayurakshi Basu (Nee Maitra)

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Special Marriage Act, 1954 — Section 36, 38

Citation : (2012) 10 CAL CK 0003

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Biswajit Basu in C.O. 1314 of 2012 and Mr. Susenjit Banik in C.O. 1629 of 2012, for the Appellant; S.P. Mukherjee, Debanjan Mukherjee in C.O. 1314 of 2012 and Mr. Partha Ganguly in C.O. 1629 of 2012, for the Respondent

Judgement

Prasenjit Mandal, J.—These two applications are directed against the Order No. 27 dated March 19, 2012 passed by the learned Additional District Judge, 9th Court, Alipore in Misc. Case No. 8 of 2011 arising out of the Matrimonial Suit No. 13 of 2011. Since, the common fact is involved in the matter, these two applications are disposed of by this common judgment. For convenience, the C.O. No. 1314 of 2012 is discussed first.

C.O. No. 1314 of 2012:-

2. The wife has instituted this application praying for enhancement of the alimony granted pendente lite in the said suit.

3. In the said matrimonial suit, the husband prayed for a decree of restitution of conjugal rights between the parties at a residence other than the present residence of the respondent and other consequential reliefs. The wife is contesting the said suit and she filed an application u/s 36 read with Section 38 of the Special Marriage Act, 1954 and that application was disposed of on contest directing the husband to pay an interim alimony at the rate of Rs. 10,000/- per

month for the wife and an amount of Rs. 5,000/- per month for the maintenance of child and also a sum of Rs. 5,000/- as litigation costs. Being aggrieved by such orders, the wife has preferred this revisional application for enhancement.

4. Admittedly, the marriage between the two was held on August 9, 2006 under the provisions of the Hindu Marriage Act and both the parties lived together and a female child was born on October 23, 2007 in the wedlock. Admittedly, the petitioner was employed at AMRI Hospital, Dhakuria, but, she had to leave the job for the proper care of the child.

5. The petitioner has contended that she has no income of her own. On the other hand, the husband earned Rs. 45,000/- per month at the time of filing of the application and so, the wife/ petitioner herein has claimed alimony at the rate of Rs. 15,000/- per month for herself and Rs. 7,000/- per month for the daughter and a sum of Rs. 10,000/- as litigation costs. The petitioner has also contended that she had to expend Rs. 75,000/- for admission of the child to the International School South City. So, she is entitled to get a sum of Rs. 75,000/- also. The learned Trial Judge granted alimony as stated above. Beside that the learned Trial Judge has also granted the education charge of Rs. 75,000/- for the daughter by five installments.

6. It is pertinent to mention that the husband filed a suit being Matrimonial Suit No. 358 of 2011 before the learned District Judge, South 24 Parganas and the same was renumbered subsequently as Matrimonial Suit No. 58 of 2011.

7. The parties have adduced evidence in support of their respective contentions on alimony and litigation costs and as per evidence on record, the husband earns a net sum of Rs. 46,055/- per month and he has filed a number of salary certificates for that purpose. Admittedly, the wife has no source of income of her own at present. Under the circumstances, the wife is entitled to get alimony for herself and the daughter residing with her.

8. So far as the maintenance for the wife and the daughter is concerned, upon due consideration of the socio-economic condition of the parties, I am of the view that the amount cannot be stated either less or more than the required sum for the maintenance of the two. The learned Trial Judge has recorded reasons why he is granting alimony pendente lite for the two in the manner indicated above.

9. The contention of the wife is that she should get more. This contention, I hold, cannot be accepted because of the total net income of the husband and if more amount is granted, it would cover more than 1/3rd of the net income of the husband.

10. Therefore, so far as maintenance for the two is concerned, I am of the view that the learned Trial Judge has passed a reasonable order granting the alimony pendente lite in the manner indicated above.

11. So far as the grant of the costs for education of Rs. 75,000/-, the wife has stated that before getting her daughter admitted to a good school of the locality

in South Kolkata, she wanted to have talks with her husband. But, the husband declined to talk or even to make conversation through email. So, the wife had to take decision independently. Though, as per materials on record, there are many good schools in the South Kolkata, the wife has explained why her daughter was admitted to the said school. The reasons as stated by her are that it is the school of the locality which does not require the consent or signature of the father of the kid. The wife has explained that her husband told her through email not to contact him about the admission of the child, even not to call him over phone. In my view, the wife has explained properly as to why her daughter was admitted to that particular school where she is to incur heavy expenses.

12. Under the circumstances, I am of the view that the wife had no other alternative, but to get her daughter admitted to that school and so, the husband is bound to pay the educational expenses of Rs. 75,000/-. The learned Trial Judge directed payment of such money by five monthly installments at the rate of Rs. 15,000/- per month.

13. As per materials on record, the husband is an able-bodied person having a decent income as noted earlier and he is staying with his parents and sister without any liability to pay any house rent. The father of the husband is a retired Senior Executive of a Multi-National Company. Under the circumstances, the mother and sister of the husband cannot be considered as dependants on the husband/opposite party herein.

14. Under such circumstances, the alimony as granted by the learned Trial Judge cannot be said to be excessive or lower at all, rather, the amount has been granted keeping in mind the status of the husband of the wife/petitioner herein. So, under the circumstances, the litigation costs of Rs. 5,000/- cannot also be stated to be excessive at all.

15. Mr. S.P. Mukherjee, learned Advocate appearing for the opposite party, has referred to the decision of Smt. Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others, and thus, he has submitted that at the time of granting alimony pendente lite some conjecture and guesswork by Court is permissible. But, in the instant case, the husband has disclosed his income by producing the salary certificate and in any case, the amount cannot be excessive or extortionate. He has also contended that reasonable comfort to the wife and ability to prosecute her case should be the matter of consideration for determination of the quantum.

16. He has next referred to the decision of Sushanta Kar v. The State reported in 2002 (1) CLJ 25 and thus, he has submitted that in any case maintenance cannot be more than 1/5th of the income of the husband. So, excess amount has been granted as alimony and it should be lessened accordingly.

17. Mr. Mukherjee has also referred to the decision of Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others, and thus, he has submitted that maintenance should be given so that the wife can live in the manner more or less to which she was accustomed. The concept of maintenance must, therefore,

include provision for food and clothing and the like and take into account the basic need of a roof over the head. This decision, I hold, lays down the general principles in granting maintenance to be granted to a Hindu widow under the provisions of the Hindu Adoption and Maintenance Act. In this case, the financial position of both the parties to the suit is very much clear as indicated above. So, it is easy to determine the quantum of alimony to be paid by the husband to the wife.

18. The decision of Jasbir Kaur Sehgal (SMT) (supra) is the clear indication as to the mode of determination of the alimony and in consideration of the alimony as granted by the learned Trial Judge, I am of the view that the ratio laid down in the said decision has been followed by the learned Trial Judge.

19. In that view of the above observations, I am of the opinion that there is no scope of interference with the impugned order at all.

20. The amount that has been paid by the husband in favour of the wife shall be adjusted against the order of alimony. Since, the time for payment of arrears of alimony by installments has already lapsed, all arrears of alimony must be paid by five monthly equal installments approximately commencing from November 2012.

21. The application is, therefore, disposed of in the manner indicated above.

22. Considering the circumstances, there will be no order as to costs.

C.O. No. 1629 of 2012:-

23. This application has been preferred by the husband against the wife against the selfsame order.

24. In view of the above findings, this application is also disposed of on the selfsame reasoning.

25. It is also recorded that the amount as paid by the husband, pursuant to the order of the Court shall be adjusted against the alimony.

26. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.