

(2012) 05 CAL CK 0033
In the Calcutta High Court
Case No : C.O. No"s. 197 and 411 of 2012

Soumitra Ranjan Mukherjee

APPELLANT

Vs

Sabine Marianne Mukherjee
 Sabine Marianne
Mukherjee Vs Soumitra Ranjan Mukherjee

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Contract Act, 1872 — Section 68
Criminal Procedure Code, 1973 (CrPC) — Section 125
Divorce Act, 1869 — Section 36
Hindu Adoptions and Maintenance Act, 1956 — Section 18, 23(2), 3
Hindu Marriage Act, 1955 — Section 24, 25
Parsi Marriage and Divorce Act, 1936 — Section 39
Special Marriage Act, 1954 — Section 36, 37

Citation : (2012) 3 CALLT 316

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Probal Mukherjee and Mr. Rajat Dutta in C.O. Nos. 197 and 411 of 2012, for the Appellant; Bhaskar Sen and Mr. Smarajit Roychowdhury in C.O. Nos. 197 and 411 of 2012, for the Respondent

Judgement

Soumen Sen, J.—The husband and the wife both dissatisfied with the order dated 23rd December, 2011 for different reasons filed this application challenging the order passed by the 14th Additional District Judge, Alipore in Misc. Case No. 1 of 2011 arising out of M.A.T Suit No. 105 of 2008. The said impugned order was passed in a proceeding initiated by the wife u/s 36 of the Special Marriage Act, 1954. Before entering into the illegality and correctness of the order impugned, it is necessary to consider the scope, ambit and width of Section 36 of the Special Marriage Act, 1954 which is reproduced hereinbelow: -

36. Alimony pendente lite. - Where in any proceeding under Chapter V or Chapter VI it appears to the district Court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the

expenses of the proceeding, and weekly or monthly during the proceeding such as having regard to the husband's income, it may seem to the Court to be reasonable:

[Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.]

2. The wife, in such a proceeding, is required to satisfy that she has no independent income sufficient for her support and meeting the necessary expenses of the proceeding.

3. In the event, the wife satisfies the aforesaid requirements then only the husband would be required to pay her such maintenance and expenses of the proceeding weekly or monthly during the proceeding to be determined having regard to the husband's income and as it may seem to the Court to be reasonable. In deciding as to whether the wife has no independent income as contemplated under the section or not, the amount that would be required for her support first need to be ascertained, that is to say, whether the income if at all there be any, is sufficient for her support and to meet the necessary expenses of the proceeding. In determining such income, one has to consider the sufficiency of the existing income if there be any and the income should be so much so that such income would be enough for her support and sufficient to meet the necessary expenses of the proceeding.

4. The expression "no independent income" is qualified by the subsequent word "sufficiency". There may be a case where the wife is having some income but such income is not sufficient for her support and to meet the necessary expenses of the proceeding. In such event, the wife would be entitled to maintenance under this section.

5. The said expression "maintenance" and "support" has fallen for consideration in *Rajesh Burman Vs. Mitul Chatterjee (Burman)* reported in 2009(1) SCC 398. The Hon'ble Supreme Court in the said decision considered Sections 36 and 37 of the Special Marriage Act and upon examination of the said two expressions "maintenance" and "support" it was held as follows:-

25. Reading the scheme of the Act, it is clear that a wife is entitled to "maintenance and support". In our considered opinion, the learned counsel for the respondent wife is right in submitting that the two terms "maintenance" and "support" are comprehensive in nature and of wide amplitude.

26. The term "maintenance" is defined in Black's Law Dictionary (6th Edn., pp.953-54) thus:

...The furnishing by one person to another, for his or her support, of the means of living, or food, clothing, shelter, etc. particularly where the legal relation of the parties is such that one is bound to support the other, as between father and

child, or husband and wife.

Likewise, the word "support" as defined in the said dictionary

(p.1439) reads as under:

That which furnishes a livelihood; a source or means of living; subsistence, sustenance, maintenance, or living. In a broad sense the term includes all such means of living as would enable one to live in the degree of comfort, suitable and become to his station of life. It is said to include anything requisite of housing, feeding, clothing, health, proper recreation, vacation, traveling expense, or other proper cognate purposes; also, proper care, nursing, and medical attendance in sickness, and suitable burial at death."

27. The courts below also considered some of the decisions cited before them. In Pradeep Kumar Kapoor v. Shailja Kapoor reported in AIR 1989 Del 10, the High Court of Delhi interpreted "maintenance" and "support" u/s 24 of the Hindu Marriage Act, 1955 and observed: (AIR pp.12-13 para 9)

9. u/s 24 of the Act, the Court has to see if the applicant who may either be wife or husband has no independent income sufficient for her or his support and the necessary expenses of the proceeding, and then award expenses of the proceeding and such sum every month, having regard to the applicant's own income and the income of the respondent, which may seem to the court to be reasonable. This Section may be contrasted with Section 25 of the Act which deals with permanent alimony and maintenance. u/s 25, the court may order the respondent to pay to the applicant for her or his maintenance and support, till her or his lifetime, either a lump sum amount or such monthly or periodical sum, having regard to the respondent's own income and other property, if any, and the income and other property of the applicant, the conduct of the parties and other circumstances of the case, which the court might deem just. It may be noticed that heading of Section 24 of the Act is "Maintenance pendente lite and expenses of proceedings", but, to me, it appears that the words "support" and "maintenance" are synonymous. "Support" means "to provide money for a person to live on", like "he supports a family" or "he supports his old mother". Maintenance is "an act of maintaining" i.e. to support with money. For example, "he is too poor to maintain his family". It may be useful at this stage to refer to the definition of "maintenance" as given in the Hindu Adoptions and Maintenance Act, 1956 (for short "the Act of 1956"). u/s 3 of that Act, "maintenance" includes (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage. I would, therefore, think that when we talk of maintenance and support, the definition of "maintenance" as given in the Act of 1956 should be adopted. Section 18 of the Act of 1956 also refers to maintenance of wife and gives the circumstances under which a Hindu wife is entitled to live separately from her husband without forfeiting her claim to maintenance.

28. In *Atul Sashikant Mude Vs. Niranjana Atul Mude*, , the Court considered the provisions of the Hindu Adoptions and Maintenance Act, 1956 and held that a court is empowered to pass interim and ad interim orders of maintenance. It was held that the inclusive definition of "maintenance" under the Act would include food, clothing, residence, education, medical attendance and treatment.

29. In *R. Suresh Vs. Smt. Chandra M.A.*, , a similar question arose before the High Court of Karnataka, Construing the word "support" in Section 24 of the Hindu Marriage Act, 1955, the Court held that the word "support" occurring in the said section can be given the same meaning attributed to the word "maintenance" as defined in Section 3 of the Hindu Adoptions and Maintenance Act, 1956 which would include provisions for food, clothing, residence, education, medical attendance and treatment.

30. Recently, in *Ajay Saxena v. Rachna Saxena* reported in AIR 2007 Del 39, analyzing the provisions of the Hindu Adoptions and Maintenance Act, 1956, the Court held that in a suit u/s 18 of the Act, the wife can claim interim maintenance. It was further held that such interim maintenance may also cover expenses incurred towards medical treatment. Obligation of the husband to pay such expenses cannot be deferred till final adjudication of the suit. Nor can husband avoid obligation to pay further sum to his wife towards medical reimbursement on the ground that the amount of interim maintenance being passed included entire expenses on medical treatment.

6. The question as to what income is sufficient for the support of the wife, would have to be taken with reference to the Class she and her husband belong to and if the amount of maintenance awardable to wife is to depend on the status and station of the husband, the amount which can be regarded to be sufficient for her support must also depend on and vary with the status and station of the husband. (*Chitra Sen Gupta v. Dhruva Jyoti Sen Gupta*, 1987 (1) CHN 450)

In the aforesaid decision, the Hon'ble Division Bench was considering the expression "income sufficient for her support" in Section 24 of the Hindu Marriage Act, 1955. The Division Bench in Paragraphs 4 and 5 held as follows:-

4. Class less society being still a very far cry and the society we live in being class ridden to the extreme, the question as to what income is sufficient for the support of a wife, would, whether one likes it or not, have to be determined with reference to the class she and her husband belong to. And, therefore, what may be considered to be sufficient for the support of the wife of a petty clerk would not be regarded to be sufficient for the support of the wife of a high-salaried big officer. "To support" lexically means to supply with necessities and Section 68 of the Contract Act would show necessities in respect of a person must be "suited to his condition in life". And as was held by a Division Bench of this Court in construing that Section in *Jagon Ram v. Mahadeo Prosad* (ILR 36 Cal 768 at 777), necessities would include everything necessary to maintain a person in the state, station or degree of life in which he is and being thus a relative expression

must be determined with reference to those factors. It has been held by an another Division Bench of this Court in *Surendra Nath v. Puspa* (1978) 2 Cal 602 at 604), that the quantum of maintenance pendente lite under s. 24 of the Hindu Marriage Act would depend on various factors "such as, the ability of the husband, the needs of wife, the social status, age, education and other requirements". It may also be noted that under s. 23(2) of the Hindu Adoption and Maintenance Act, 1956, in determining the amount of maintenance to be awarded to a wife, that first thing the Court would have to regard to is "the position and the status of the parties". We are of the view that if the amount of maintenance awardable to the wife is to depend on the status and station of the husband, the amount which can be regarded to be sufficient for her support must also depend on and vary with the status and station of the husband. We would accordingly hold that the expression "income sufficient for her support" in s. 24 of the Act would not mean only such amount as would be sufficient for the wife to eke out her existence at the subsistence level, but would cover such amount as would be necessary for the necessities suited to the status and station which the wife would have enjoyed as the wife of the respondent husband.

5. If this is, and we think that it is, the position in law, then we would be inclined to hold that even though the amount of about Rs. 1900/- or even about 1200/- would otherwise have to be taken as sufficient for the support of the petitioner by the ordinary Indian standard, the same cannot be regarded to be sufficient for her support in view of the class her husband belongs to and the status he enjoys.

7. There is no ceiling as to the amount of maintenance to be awarded under the Special Marriage Act, unlike Section 36 of the Indian Divorce Act, 1869 and Section 39 of the Parsi Marriage & Divorce Act, 1936. On the aspect of the quantum of alimony to be awarded by way of alimony pendente lite, it was held in 1979 (1) CHN 15 (*Surendra Nath Arora vs. Sm. Puspa Arora*) that quantum of alimony to be awarded is certainly a matter of discretion depending upon various factors such as the ability of the husband, needs of the wife, the social status, age, education and other requirements of the applicant and so on. In the absence of express provision as to maximum alimony in the Hindu Marriage Act, discretion vested in the Court determining the reasonable amount of maintenance should not be curtailed by importation of principle from the Indian Divorce Act. Ordinarily and in the absence of special circumstances, one fifth of the husband's income less wife's income, if any, is taken as a safe guide.

8. The judgment in *Surendra Nath* (supra) was considered subsequently by another Division Bench in *Chitra Sen Gupta* (supra) and held as follows:-

13. Though Section 24 of the Hindu Marriage Act fixes no ceiling as to the amount of maintenance to be awarded as in Section 36 of the Indian Divorce Act, 1869 and Section 39 of the Parsi Marriage and Divorce Act 1936, a Division Bench of this Court has accepted such limits to the extent of one-fifth of the husband's income which is ordinarily a safe guide in the absence of special circumstances. The claim of the wife of Rs. 7000/- per month falls far below such

ceiling in this case where the husband's income has been accepted to be to the tune of ₹ 40,000/- per year.

14. In determining the amount to be awarded to the wife as cost of litigation, the income of the husband ought to be taken into consideration. The claim of the petitioner for Rs. 10,000/- as cost of litigation is allowed.

9. The aforesaid principles of law are now required to be applied in the present fact situation.

10. On 1st June, 1990, the marriage was solemnized between the petitioner and the opposite party who is a German lady by birth under the Special Marriage Act, 1954. Both the spouses were divorcees at the time of marriage. Soon after the marriage, marital discord started between the parties. The husband complained that the wife was incapable of bearing any child and even the proposal for artificial means of pregnancy was refused by her and, accordingly, the husband was deprived of having the pleasure of being the father which severely affect the mind and health of the husband. Finally on 18th June, 2005, the husband withdrew himself from the company of the opposite party and left the house at 94/S, Haraprasad Shastri Sarani, New Alipore, Kolkata-700 053. The said property was purchased by the husband and the wife is presently residing at the said flat.

11. In 2006, the wife filed an application u/s 125 of the Criminal Procedure Code and being Misc. Case No. 806 of 2006 and in the said proceeding, the husband was directed to pay Rs. 40,000/- as alimony pendente lite with effect from 1st April, 2007 which on challenge subsequently reduced on 16th February, 2008 to Rs. 20,000/-. The husband claims to have paid a sum of Rs. 10,50,000/- to the wife between August 2007 and 22nd March, 2012. During the pendency of the criminal proceeding, the husband on 25th July, 2007 filed a divorce suit being M.S. 1308 of 2007 since remembered as MAT Suit No. 105 of 2008 and the said suit is otherwise ready for hearing. During the pendency of the said proceeding, the wife filed an application u/s 36 of the Special Marriage Act on 29th September, 2008.

12. After a contested hearing by a detailed judgment and order dated 23rd December, 2011, the learned Additional District judge, 14th Court, Alipore, 24-Parganas (South) directed the husband to pay a sum of Rs. 30,000/- per month as per English calendar month from the date of filing of Misc. case excluding the maintenance granted in an application u/s 125 of the Criminal Procedure Code. The husband was directed to pay litigation cost to the tune of Rs. 50,000/- to the wife in two instalments. The arrear of alimony pendente lite till the date of the impugned order was directed to be paid in 10 equally monthly instalments which shall be payable by the 10th of each succeeding month according to English calendar months. Such arrears were directed to be paid together with current alimony in every month till realization.

13. Being aggrieved by the said order, the husband filed C.O. 197 of 2001

questioning the propriety of the said order.

14. In the said application, it was urged that the learned Court below has completely overlooked the fact that the wife/opposite party has independent income sufficient for her support and the necessary expenses of the proceeding as the husband had already paid Rs. 1,73,00,000/- to the wife which would appear from a statement of account at page 37 of the revisional application.

15. It was further argued that it would appear from record that the wife/opposite party had earned more than Rs. 1,03,93,174/- from different sources. The amount of Rs. 1,73,00,000/- which was paid by the husband has been admitted by the wife during her evidence and, accordingly, the finding of the Court that the wife/opposite party has no independent income which is enough for her support in the city like Kolkata is clearly perverse. It is argued that all the pari materia legislations recognize the principle that interim alimony is based on economic tutelage of a spouse and it aims at administering justice and maintaining equilibrium between the parties. In fact, the trial Judge in calculating the income of the husband has failed to take into consideration the deduction on account of provident fund from the salary.

16. It was argued that the trial Court should have considered the net income which the husband ultimately receives, that is to say, take home salary. The determination of the quantum of the alimony pendente lite was also questioned.

17. The learned Court below in determining the alimony pendente lite fixed an amount between one-third to one-fifth on the basis of an observation of this Hon"ble Court in a judgment reported in 2009 (1) CHN 282 (Soma Chowdhury (Sarkar) Vs. Pradip Kumar Chowdhury), the relevant observations are as follows:-

It is now settled law that the amount of alimony pendente lite should vary between one-third and one-fifth of the income of the earning spouse depending upon the facts and circumstances of the case."

18. It is contended that Section 24 of the Hindu Marriage Act, 1955 is not a code of rigid and inflexible rules, arbitrarily ordained and to be blindly obeyed. It leaves everything to the Judge's discretion. It does not enact any mathematical formulae of 1/3rd or any other proportion. It gives wide power, flexible and elastic to do justice in a given case.

19. In referring to Dhirajben Prabhudas Parmar Vs. Rameshchandra Shambhulal Yadav, and AIR 1984 Del 320 (Dev Dutt Singh v. Smt. Rajni Gandhi), it was argued that the Hon"ble Gujarat High Court observed that this rule of thumb 1/5th or 1/3rd can not be applied in all cases and should not be encouraged also. While the Delhi High Court observed that the word "support" is of side merit, the support has to be according to the standard of the parties. There is no inflexible rule. The Gujarat High Court held that in fixing maintenance regard has to be made to a number of dependents in the respondent's family. The Delhi High Court held that support has to be according to standard of parties and in

determining the husband's disposable income amount deposited by him in public provident fund ought to be taken into account. It was observed that what is a proper portion of the husband's income to be given to the wife as maintenance pendente lite is a question to be determined in the light of all the circumstances of a particular case. Section 24 is not a code of rigid and inflexible rules, arbitrarily obtained, and to be blindly obeyed. It leaves everything to the Judge's discretion. It does not enact any mathematical formulae of one-third or any other proportion. It gives wide power, flexible and elastic, to do justice in a given case. Case law discussed. There may be cases when more than 1/3rd would be justified. There are likely to be many other cases where less than 1/3rd is the only practical solution. The decision of Court can never be a specific guidelines. They are not precedent in the strict sense of the word (Martin Vs. Martin (1977) 3 All England Report, 768, CA.). The Court below while passing the order dated 23rd December, 2011 wrongly recorded in paragraph 4 of page 4 that the petitioner/husband has no liability. In fact, the husband is maintaining his old octogenarian mother.

20. It was argued that the trial Judge below also gave undue, unnecessary preference to the opposite party/wife in referring her as a German Lady. The learned trial Judge also failed to appreciate that the opposite party is not unemployed as she was having a money lending business which would be apparent from Page 7 and 72 of the other Civil Revisional Application being C.O. No. 411 of 2012 filed by the wife challenging the same order.

21. Subsequent to the revisional application filed by the husband, the wife also filed an application being C.O. No. 411 of 2012 challenging the said order on the said ground that the learned Judge should have allowed alimony pendente lite as claimed in the said petition. The said order was challenged on the ground that the award of Rs. 50,000/- including the amount of Rs. 20,000/- passed in the criminal proceeding is baseless, unreasonable and not in consonance with the principle laid down by Courts with regard to quantum of such maintenance pendente lite which varies from 1/3rd to 1/5th. In fact, the monthly income of the husband is Rs. 3,57,000/- per month and applying the principle of 1/5th a sum of Rs. 71,400/- should have been awarded to the wife. The wife in her evidence has said that he was working as a District nurse-in-charge in Germany and retired from service in the year 1980 after serving 10 years. She did not receive any amount after retirement from the erstwhile employer. However, she admits that prior to the marriage in 1985, a sum of Rs. 1,33,507/- was transferred from Germany to her bank account in India, namely, Canara Bank, Entally Branch. She had also received a sum of Rs. 3,50,000/- as her share in the property belonging to her mother which was sold sometimes in 2007 and such money was remitted to her by her brother. Since 2005, she is maintaining a bank account with HDFC. She also used to receive interest on loan of Rs. 2,00,000/- from T.C. Maschinen. Such loan was repaid in the year 2008. Some portion of the cross examination of the wife in this regard may be reproduced hereinbelow:-

without go through the papers I cannot say that how much money I have received from Mutual Fund in the year 2008. From the document annexure "E" shown by the respondent in his affidavit it appears that I most probably received Rs. 1,50,000/- from I.C.I.C.I. Prudential as dividends in the month of May, 2008. It is fact that I have sold that family Jewellery to Ram Laxman in New Market but I do not know the exact figure which I have received by selling the family jewellery. Voluntarily It was my own jewellery. I have invested that amount but I do not remember where I have invested.

I have invested some money in I.C.I.C.I. Prudential and H.D.F.C. Bank, near about 10 lakhs I have invested in such company. I have spent some money which I have received from my husband in building, some money is still lying in my Bank Accounts. I cannot say at present how much money are lying in my Bank accounts. It is fact that I have my passbook of my Bank account. Yes, I will produce my passbook before this Court.

This is the letter issued by Mr. D. Ghosh, authorized signatory for T.C. Maschinen to me in respect of interest of loan by which I have received a cheque of Rs. 6,667/- on 31-03-08 marked exbt.C. This is the letter issued by Mr. D. Ghosh authorized signatory for T.C. Maschien to me in respect of repayment of loan by which I have received a cheque of Rs. 2,00,000/- from the T.C. Maschinen marked exbt.D.

I have an account of H.D.F.C. Bank being account no. 136865 and another bank account no. 0023274 is lying in the name of my husband in the same bank. I cannot say the exact amount but some amount has been transferred from my husband's account to my account in the year 2007. I do not know whether Rs. 3,00,373.40/- was transferred to my account from my husband's account. I do not remember the figure of the amount was transferred in my account in the year 2007.

Question:-Whether your husband had transferred Rs. 36,05,505.00, Rs. 6,20,937.50 and Rs. 5,00,000/- total amount to Rs. 47,26,442.50 in your bank account in between 2005 and 2006?

Answer:-Yes, it was transferred but I cannot say the exact amount. 1/6th share out of total amount of Rs. 65000/- Euro is come to Rs. 5,35,560/- in Indian currency in the year 2008. I have invested some amount in I.C.I.C.I. Prudential from my H.D.F.C. Bank but at present I cannot say the exact amount.

Question:-As on 14-09-2005 total amount of Rs. 3605505/- was in your credit as per H.D.F.C. Bank?

Answer:-I cannot say the exact figure. Question:-Between September 2005 and February 2007 your husband transferred Rs. 620937.50 in your account?

Answer:-I cannot say the exact figure which was transferred by my husband. Not a fact that I do not have enough money. Not a fact I do not require any money.

22. The belated application of the wife for recalling of the husband to adduce

further evidence rejected by an order dated 23rd December, 2011.

23. From the evidence of the wife it cannot be said that the wife had no income, the question is whether the income is sufficient for her support and to meet the necessary expenses of the proceeding.

24. In a proceeding arising out of Section 125 of the Code of Criminal Procedure, 1973, the wife claimed interim maintenance of Rs. 80,000/- per month till disposal of the said application. The learned Magistrate allowed the petition for interim maintenance of Rs. 40,000/- with effect from 1st April, 2007. In a criminal revision preferred by the husband by an order dated 16th February, 2008, the Additional District and Session Judge, First Track Court, reduced the said interim maintenance to Rs. 20,000/-. The reason for reduction was that the wife could easily earn Rs. 20,000/- per month from the money given to her by the husband by way of interest. The said order has not been challenged by either of the parties. On 16th February, 2008 it remains that both the parties accepted that the wife would be entitled to an interim maintenance of Rs. 20,000/-, although a claim was made for a sum of Rs. 80,000/-. After the said judgment dated 16th February, 2008 from evidence it appears that the wife received some dividend from mutual funds and income yielding investments. She realized a sum of Rs. 2,06,667/- on 31st March, 2008 towards repayment of loan and interest of loan taken from her in November, 2007. She is having some income from mutual funds which include Sundaram Mutual Fund.

25. It further appears that the ICICI Prudential Mutual Fund have been redeemed prior to 30th May, 2008 and it is admitted by the wife in the evidence that she had received Rs. 1,50,000/- as dividends on account of ICICI Prudential for the month of May, 2008. She had also realized some amount from selling jewellerys but she could not positively say where such proceeds have been invested.

26. The wife further admitted that she had invested money in ICICI Prudential and HDFC and near about Rs. 10,00,000/- she had invested in some companies. The Revisional Court proceeded on the basis that having regard to the evidence on record, a sum of Rs. 40,000/- would be required by the wife for her interim maintenance out of which Rs. 20,000/- would be paid by the husband since the wife could easily earn Rs. 20,000/- per month from the money given to her by the husband. The said finding was arrived at on the basis of the admission made on behalf of the wife that the husband has transferred amount of Rs. 40,00,000/- in the account of the wife. Over and above, it appears that the wife had received some additional amounts and she had made further substantial investments. Accordingly, it cannot be said that she had no income. Moreover, it appears that full particulars of investments were not placed before the trial Court including the detailed particulars of the mutual funds and other income bearing deposits. The trial Judge granted alimony pendente lite of Rs. 50,000/- per month including Rs. 20,000/- per month already granted in the proceeding u/s 125 of the Cr.P.C. on the ground that such amount towards maintenance would be required for ends of justice and taking into consideration that the petitioner is a German Lady and

wife of a Managing Director and she needs to maintain herself commensurate with the status of the husband. The trial Judge has also taken into consideration the other heads of expenses, namely, food, lodging, clothing, medicine, electricity, telephone, transportation and various other daily maintenance expenses.

27. The wife is enjoying a prime property in a posh locality which was purchased by the husband. The wife claimed that she is paying the maintenance and electricity charges. It is true that she is the wife of a Managing Director and so long the relationship subsists, the wife would be entitled to maintain herself commensurate with the status of the husband. The emphasis, however, should be on "income sufficient for her support". When it is established that the wife is having some income, the onus is on the wife to show that such income is not sufficient for her support and meet the necessary expenses of the proceeding. Once the evidence is that the husband has transferred more than Rs. 40,00,000/- and sufficient funds have been received in 2008 inasmuch as substantial investments have been made even in 2010, the wife is required to demonstrate may not be with mathematical accuracy and precision her further need for her support and to meet the necessary expenses of the proceeding.

28. The Section does not mention the minimum or the maximum outer limit that a wife could claim as alimony pendente lite. The judicial decisions varied from one-third to one-fifth. Some amount of guesswork and thumb rule is applied, once the Court is satisfied that the wife would require some amount for her support and meet necessary expenses of the proceeding. The word "support" may not extend to limitless luxury and unlimited spending. There may be a situation where the wife of a high profile person may lead a very simple life with less mundane requirements and vice versa. However, in deciding alimony pendente lite, regard has to be had of the class her husband belongs to and the status he enjoys.

29. The Court in deciding the said application is also required to keep in mind that the amounts that would be paid as alimony pendente lite, are not recoverable even if the plaintiff succeeds. Accordingly, a balance has to be struck between the income of the husband and the need of the wife for her support and necessary expenses.

30. It appears from the impugned judgment that the learned trial Judge did not take into consideration the subsequent income received towards repayment of loan and interest and other incomes in the year 2008 and other investments made which according to the wife could be around Rs. 10,00,000/-.

31. In view of the aforesaid and keeping in mind that the wife is still the wife of a Managing Director and earning at least a sum of Rs. 20,000/- per month from the investments, justice would be done if the husband is directed to pay alimony pendente lite to the wife at the rate of Rs. 30,000/- per month including Rs. 20,000/- per month already granted in the proceeding u/s 125 of the Code of

Criminal Procedure from 29th September, 2008 till 31st December, 2010 and Rs. 40,000/- per month including Rs. 20,000/- already granted u/s 125 Cr.P.C. from 1st January, 2011 till 30th April, 2012 and at the rate of Rs. 50,000/- per month from May, 2012 till disposal of the suit. The litigation cost is also reduced to Rs. 25,000/- to be paid by the husband on or before 30th June, 2012. The arrear of alimony pendente lite till the date of this order to be paid in five equal monthly instalments commencing from 10th June, 2012. The alimony pendente lite shall be payable by the 10th of each succeeding month according to English Calendar months. The arrear of alimony pendente lite shall be payable in five equal monthly instalments together with current alimony in every month till the final realization. The payments already made during the pendency of this proceeding would be adjusted against arrears of maintenance pendente lite. The impugned order stands modified to the aforesaid extent.

32. The C.O.No. 197 of 2012 succeeds in part.

33. The C.O.No. 411 of 2012 is dismissed.

34. However, there shall be no order as to costs.

35. The Additional District Judge before whom the Matrimonial Suit is pending, is directed to dispose of a suit as expeditiously as possible and preferably within 15 months from the date of communication of this order without granting any unnecessary adjustments to either of the parties.

36. In view of the disposal of the revisional applications, the department is directed to send down the L.C.R. to the learned Additional District Judge, 14th Court, Alipore immediately. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.