

(2012) 09 CAL CK 0001

Calcutta High Court

Case No: C.O. No. 1101 of 2012

Sri Santanu Majumder

APPELLANT

Vs

Smt. Baishakhi Majumder @
Mondal

RESPONDENT

Date of Decision: Sept. 7, 2012

Acts Referred:

- Hindu Marriage Act, 1955 - Section 12(1)(d), 13(1)(ia), 14, 26

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Tapas Kr. Dey and Mr. Nirumpam Sarkar, for the Appellant; Santi Sekhar Mukherjee, Sanjay Mukherjee and Mr. Rajarshi Datta, for the Respondent

Judgement

Prasenjit Mandal, J.

This application is at the instance of the husband and is directed against the Order dated November 30, 2011 passed by the learned Additional District Judge, 9th Court, Alipore in Matrimonial Suit No. 142 of 2010 thereby disposing of an application u/s 26 of the Hindu Marriage Act. In the said matrimonial proceeding, u/s 12(1)(d) of the Hindu Marriage Act with alternative prayer u/s 13(1)(ia) of the Hindu Marriage Act read with Section 14 of the said Act, the wife/opposite party herein filed an application u/s 26 of the Hindu Marriage Act and that application was allowed on contests directing husband to pay a sum of Rs. 27,000/- towards delivery charge and Rs. 9,000/- as admission charge for the child. The husband has been further directed to pay a sum of Rs. 3,500/- towards maintenance of the child per month including education charges. Being aggrieved by such orders, this application has been preferred.

2. Now, the question is whether the impugned order should be sustained.

3. AS per materials-on-record, marriage between the two took place on July 10, 1999 according to the Hindu Customs and Rites and the parties resided together as

husband and wife for three months at the matrimonial home. A child was born in the wedlock during the stay of the wife/opposite party herein at her parents' house. The petitioner has claimed the delivery charge and the education charge for the child and also the maintenance charge for the child as stated above.

4. It is pertinent to mention that previously, maintenance was granted in favour of the minor son at the rate of Rs. 1,200/- per month and a litigation cost of Rs. 2,500/- in favour of the minor son. The portion of the orders of litigation cost of Rs. 2,500/- was set aside by an order dated August 20, 2004 passed by a learned Single Judge of this Hon'ble Court in C.O. No. 2364 of 2004. So far as the delivery charge is concerned, from the materials-on-record, I find that the wife/opposite party stayed at that time at the house of her father. There is no evidence that the husband was consulted before making such expenses. Moreover, the wife has contended that the husband is a Cable Operator by profession and also a free lance Journalist and thus, he earns Rs. 40,000/- per month. The husband has denied such income and it is his specific case that at present he is not doing any job of free lance Journalist but working as a Cable Operator and thus, he earns Rs. 5,000/- to Rs. 6,000/- per month.

5. The learned Trial Judge analyzed the evidence on the income of the husband and thus, he has concluded that at best the income of the husband could be raised 18,000/- per month.

6. Mr. Santi Sekhar Mukherjee, learned Advocate appearing for the opposite party, has contended that the husband maintains a car and so, from such position, the status of the husband and his income could well be assessed. This submission, I hold, cannot be accepted in view of the fact that the husband travels by the vehicle of the office provided by the company as per materials-on-record. It cannot be stated that the husband has sufficient means even to maintain a car for his service.

7. It is the clear statement of the husband that at the time of delivery of the child neither the wife nor the parents of the wife informed him of her admission in the nursing home and subsequently, the delivery of the child. They did not obtain his consent for such admission disregarding his financial status.

8. This being the position, I am of the view that the learned Trial Judge was not justified at all in granting the delivery charge of Rs. 27,000/- which was expended by the wife according to her own sweet will and not with the consent of the husband. So, the husband cannot be saddled with the obligation to bear such charges. So, this portion of the order relating to delivery charges should be set aside.

9. So far as the education cost is concerned, the husband had stated on oath that before the admission of the child to a school (where the petitioner is to bear expenses) no permission was sought for from him. The husband is expected to get his child admitted to a school according to his own status and income and not at the whims of the wife/opposite party herein. The husband has clearly stated that before the admission to the concerned school, no consent was obtained from him.

Accordingly, I am of the view that the findings of the learned Trial Judge directing the husband to pay the admission charge of Rs. 9,000/- are not, at all, justified and proper. The husband is not responsible to bear such charges. However, since the child is getting education in a good school, the maintenance of the child including cost for education to the tune of Rs. 3,500/- per month as passed by the learned Trial Judge should be maintained. Save and except this portion, the other portion of the orders should be set aside.

10. Accordingly, the husband is directed to pay a sum of Rs. 3,500/- per month towards the maintenance of the child including the cost for education and such amount must be paid as per direction of the learned Trial Judge.

11. The application is disposed of in the manner indicated above. 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.