

(2013) 06 CAL CK 0015

Calcutta High Court

Case No: C.O. No. 1587 of 2013

Reba Mukherjee

APPELLANT

Vs

Sanjib Kumar Mukherjee

RESPONDENT

Date of Decision: June 14, 2013**Citation:** (2013) 4 CHN 364**Hon'ble Judges:** Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** Biswajit Basu and S. Banik, for the Appellant; Sabyasachi Bhattacharyya, for the Respondent

Judgement

Prasenjit Mandal, J.

Challenge is to the Order No. 21 dated March 6, 2013 passed by the learned Additional District Judge 5th Court, Alipore in Matrimonial Suit No. 7 of 2010 thereby allowing an application u/s 36 of the Special Marriage Act on contests. Facts necessary for the purpose of the disposal of this application are as follows:--

- i) The marriage between the parties was solemnized on August 7, 1989 under the provisions of the Special Marriage Act, 1954;
- ii) A male child was born in the wedlock on October 12, 1991; and
- iii) The husband/opposite party herein filed an application for divorce u/s 27 of the Special Marriage Act and in that Matrimonial Suit the wife has prayed for alimony at the rate of Rs. 12,000/- per month and litigation costs of Rs. 20,000/- per month.

2. Upon consideration of the application for alimony, its objection and the evidence on record, the learned Trial Judge allowed the said application on contests. The learned Trial Judge directed the husband to pay alimony at the rate of Rs. 7,000/- per month starting from the month of order i.e. March, 2013 pendente lite and litigation costs of Rs. 15,000/-.

3. Being aggrieved this application has been preferred by the wife/respondent.

4. Having heard the learned Advocates of both the sides and on perusal of the materials on record, I find that admittedly the wife is residing in the flat of the husband at Purbachal, Salt Lake along with her son who is major.
5. Admittedly, the wife has a flat of her own at Dum Dum airport and that the husband/opposite party herein is staying at Santoshpur, Jadavpur in the flat of his younger brother.
6. Admittedly, the husband is an Administrative Officer of the United India Insurance Co. Ltd. He has claimed that though a car has been provided for him by his employer, he has to bear the costs of petrol, repairing charges etc.
7. While deciding the matter the learned Trial Judge has observed that the take home salary of the husband is to the tune of Rs. 19,000/- per month after deductions and other expenses.
8. During the pendency of this application, by the order dated May 8, 2013, Hon"ble Mr. Justice Harish Tandon directed the husband/petitioner to produce the Income Tax Return for the year 2011-12 on the next date and he complied with the order accordingly.
9. Mr. Biswajit Basu, learned Advocate appearing for the petitioner has contended that some of the deductions towards Provident Fund Account, maintaining a car etc., are permissible under the provisions of the Income Tax Act but, these are related to which are compulsorily deductible. But, no deduction is permissible for payment of house rent or electricity charges. He has relied on the decision of [Dr. Kulbhushan Kumar Vs. Smt. Raj Kumari and Another](#),
10. From such Income Tax Return it reveals that the gross total income of the husband is to the tune of Rs. 8,37,311/- and after taking the benefit of deductions under Chapter VI-A of the Income Tax Act, the total income of the husband for the Assessment Year 2011-12 is to the tune of Rs. 7,28,171/-.
11. Exhibit "C" is the salary certificate of the husband indicating the total pay of Rs. 47,329.44 per month and after deduction, the take home pay is to the tune of Rs. 39,301.60 per month. Thus, from the contention of the wife it is clear that the husband has income from other sources and it is evident from the Income Tax Return and the salary certificate, Exhibit "C". So the contention of the wife that the husband earns Rs. 60,000/- to 70,000/- per month from different sources, cannot be ignored. The husband has adduced evidence that he is bound to pay the fuel charges for running the vehicle provided by his office and to pay house rent for residing in the fiat of his younger brother. Anyway, this is not an appeal at all, but, a revision and so, I am to consider whether there is any perversity in the findings. In consideration of the Income Tax Return as indicated above and the salary certificate exhibit "C" and the decision referred to by Mr. Basu, in spite of paying the liabilities/charges he is compelled to do for using the car and residing in the flat of

his younger brother, I am of the view that the husband would be able to pay the alimony to the wife at the rate of Rs. 10,000/- per month.

12. It is pertinent to mention here that though the son of the parties has attained majority and he is residing with his mother, from the evidence on record it appears that he has no sufficient income of his own and that though the father is not legally bound to provide for livelihood of his son, his moral obligation cannot be ignored.

13. Taking into consideration of all such facts and circumstances, I am of the view that the impugned order requires interference and I am of the view that it would be just to grant alimony for the wife at the rate of Rs. 10,000/- per month instead of Rs. 7,000/- as granted by the learned Trial Judge.

14. So far as litigation costs are concerned, in my view, no interference is required.

15. The application succeeds and the same is allowed accordingly.

16. The husband is directed to pay Rs. 10,000/- per month as alimony pendente lite to the wife w.e.f. March 2013. The other terms and conditions including the litigation costs as awarded by the learned Trial Judge are not interfered with. The impugned order is modified to that extent.

17. 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.