

(2012) 07 CAL CK 0173

Calcutta High Court

Case No: C.O. No. 2271 of 2008

Smt. Mira Ganguly

APPELLANT

Vs

Sri Jiban Kumar Ganguly

RESPONDENT

Date of Decision: July 6, 2012

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13, 24

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Gautam Chakraborty and Mr. S.R. Bakshi, for the Appellant; None appeared, for the Respondent

Judgement

Prasenjit Mandal, J.

Challenge is to the order dated June 27, 2008 passed by the learned Additional District Judge, 6th Court, Barasat in Matrimonial Suit No.90 of 2007 thereby allowing an application u/s 24 of the Hindu Marriage Act granting maintenance at the rate of Rs.2,500/- per month and a litigation cost of Rs.5,000/-. The husband / opposite party herein instituted an application u/s 13 of the Hindu Marriage Act for dissolution of marriage against the wife / petitioner herein. The petitioner is contesting the said matrimonial proceeding by denying the material allegations raised in the application. Thereafter, the petitioner filed an application u/s 24 of the Hindu Marriage Act praying for alimony pendente lite and for litigation costs. By the impugned order, the learned Trial Judge has granted pendente lite alimony at the rate of Rs.2,500/- and litigation costs of Rs.5,000/-. Being aggrieved by such orders, this application has been preferred by the wife / petitioner.

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

3. Upon hearing the learned Advocate for the petitioner and on going through the materials on record, I find that the grievance of the petitioner is with regard to the quantum of alimony granted by the impugned order. According to her, the husband

is a qualified Chartered Accountant and he has his own firm. Moreover, he is an able-bodied person. Under the circumstances the petitioner has claimed alimony at the rate of Rs.6,000/- per month and litigation costs of Rs.10,000/-.

4. The husband has denied that he has income from his own firm. According to him, he had a firm of his own, but, the said firm had been closed because of the torture upon him by the petitioner.

5. The parties did not adduce oral evidence. On the basis of the rival contentions supported by affidavits, the learned Trial Judge has observed that the husband was paying maintenance to the petitioner to the tune of Rs.2,000/- to Rs.2,500/- per month in spite of closer of his firm. Ultimately, when the husband stopped payment, the application for alimony pendente lite was filed on April 19, 2008.

6. On the basis of the affidavits in support of their respective contentions, the learned Trial Judge was of the view that the wife / petitioner herein has no income of her own and the opposite party is an able-bodied person. At present, his firm has been closed. Anyway, since the payment had been stopped, the application for alimony has been filed. Since, there is no convincing evidence in support of the income of the husband, the learned Trial Judge has opined that in order to have square meals a day, the wife requires, at least, Rs.2,500/- per month.

7. He has also observed that the wife should get litigation costs of Rs.5,000/-. As regards quantum of alimony pendente lite, the learned Trial Judge based his findings on some guess works that as the husband was paying Rs.2,000/- to Rs.2,500/- per month previously to the petitioner, he should be directed to make payment of such amount as alimony pendente lite in spite of closer of his firm.

8. In view of the reasoning stated above, I am of the opinion that under the aforesaid circumstances, the quantum alimony pendente lite cannot be stated as on the low side. The enhancement of alimony pendente lite as prayed for cannot be granted.

9. I am of the view that there is no scope of interference with the impugned order. This application is disposed of with the observation noted above. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.