

(2011) 07 CAL CK 0087

Calcutta High Court

Case No: C.O. No. 2554 of 2010 and C.O. No. 3102 of 2010

Tulika Samanta, Nee Panja

APPELLANT

Vs

Utpal Kumar Samanta

Utpal Kumar Samanta Vs Tulika
Samanta, Nee Panja

RESPONDENT

Date of Decision: July 14, 2011

Acts Referred:

- Special Marriage Act, 1954 - Section 36

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Gopal Chandra Ghosh and Debapratim Banerjee, for the Appellant; Dhiraj Trivedi, Amit Sharma and Brijesh Giri, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

These two revisional applications have arisen out of the same Order No. 67 dated July 2, 2010 passed by the learned Additional District Judge, 4th Court, Alipore in Misc. Case No. 15 of 2010 thereby disposing of an application u/s 36 of the Special Marriage Act. The wife has filed the C.O. No. 2554 of 2010 and the husband has filed the other C.O. No. 3102 of 2010 against the same order. For convenience, I am discussing the C.O. No. 2554 of 2010.

C.O. No. 2554 of 2010.:

2. The husband/opposite party herein instituted a suit being Matrimonial Suit No. 75 of 2005 for dissolution of marriage by decree of divorce. The wife is contesting the said suit. She filed an application u/s 36 of the Special Marriage Act claiming alimony for herself and her son. That application was registered as Misc. Case No. 15 of 2010 and by the impugned order, the application has been disposed of directing the husband to pay a monthly maintenance at the rate of Rs. 15,000/- per month for the

Petitioner and her minor son and a litigation cost of Rs. 50,000/-. Being aggrieved by that order, this application has been preferred by the wife.

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

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that admittedly, the parties were married according to the provisions of the Special Marriage Act, 1954 in 2000 and one child was born in the wedlock. The said child is minor and is a student. The wife and the child are residing separately from the opposite party (husband of the Petitioner) and the husband is staying at Bangalore for gains. Admittedly, the husband is an employee of the Siemens Information Systems Ltd. and the wife is earning at the rate of Rs. 10,000/- per month as retainer. There is no dispute that the said son is admitted to St. Xavier's Collegiate School Primary Section, Kolkata and the Petitioner has to pay Rs. 7,000/- per month for the educational expenses. There is no dispute that the husband earns Rs. 1,35,000/- and odd per month from his service. It is contended by the husband that he has to maintain his widow mother residing at Pursurah, West Bengal. The husband has also contended that after deduction under the compulsory heads, he is getting about Rs. 70,000/- per month. Further, he and other members of his family are bound to contest the criminal case u/s 498A of the CPC lodged by his wife at Alipore Court and for that reason, he has to attend the Alipore Court from Bangalore. For that he has to incur heavy expenses as litigation costs and transport charges. It is also contended that he has been paying L.I.C. premium and medical insurance premium for the benefit of the wife and son also from his net income. He has to repay the home loan also. In these regards, I do not find any strong denial on the part of the wife. The husband is bound to meet such expenses from his net income. Therefore, I am to consider whether the alimony has granted by the learned Trial Judge is enough for maintenance of the two including the educational cost of the minor son under the above circumstances.

5. Now, after deduction of the educational expenses for the child out of the alimony of Rs. 15,000/- per month (being received for the time being) the Petitioner is left with Rs. 8,000/- only. She has income of Rs. 10,000/- per month of her own from her service. But she has contended that the amount Rs. 18,000/- is not enough for her. She is supposed to maintain the similar status to that of her husband while living separately. So, with the remaining amount, that is, Rs. 18,000/- in all, it is difficult for the wife to maintain the same status of her husband with such meagre amount. In that situation, for giving proper education to the child and enough food and lodging to the Petitioner and her son, keeping in mind the status of the husband, I am of the view that she requires some more money from the husband. While her husband has sufficient income to provide for her more, why should she depend on her father and brother? Therefore, I am of the view that the husband is liable to pay more for proper maintenance of the wife and the child.

6. Having considered the liability of the husband to maintain his mother in West Bengal his other liabilities as discussed above, I am of the view that instead of Rs. 15,000/-, the husband should be directed to pay Rs. 20,000/- per month as maintenance for the wife and the child in addition to the educational expenses of Rs. 7,000/- per month for the child, in all Rs. 27,000/- per month with effect from the date as mentioned in the impugned order. As regards the other parts of the impugned order that is, relating to litigation cost, mode of payment, etc., I am of the view that those matters need not be interfered with. Sufficient amount of litigation cost of Rs. 50,000/- has been awarded. So, the husband shall not be burdened more to pay any litigation cost.

7. During the argument, Mr. Dhiraj Trivedi appearing on behalf of the husband has contended that he is paying money for the educational expenses of the child. Yet he is not able to see his child. If it is so, the husband is at liberty to take appropriate steps before the learned Trial Judge to visit his child. The husband is expending money for the betterment of the child and he must have the right to see whether the child is being properly maintained or not. The wife cannot restrain the husband from seeing the child. So, the husband is at liberty to file appropriate application before the learned Trial Judge for visiting the child at the convenient place to be determined by the learned Trial Judge upon hearing both the sides. The revisional application should, therefore, be allowed in part in the manner indicated above.

8. Accordingly, the revisional application is disposed of. The husband is directed to pay the alimony at the rate of Rs. 20,000/-per month for the maintenance of the Petitioner and her child in addition to the educational expenses of Rs. 7,000/- per month for the child. The other parts of the impugned order relating to litigation cost, mode of payment, etc. are not set aside or varied.

C.O. No. 3102 of 2010:

9. The husband has filed this revisional application praying for setting aside the impugned order on the ground that the alimony as granted by the Court and the litigation cost are excessive. In view of the above decision, I am of the view that the contention of the husband that the grant of alimony is excessive cannot be accepted. Similarly, the litigation cost as awarded, I hold, cannot be said to be excessive.

10. Accordingly, I am of the view that this revisional application has no merit at all. So, this revisional application is dismissed.

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

12. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.