

(2007) 09 CAL CK 0060

Calcutta High Court

Case No: C.O. No"s. 2231 and 2042 of 2007

Soumitra Sahu

APPELLANT

Vs

Saswati Sahu (Alu)
 Saswati
Sahu (Nee Alu) Vs Soumitra SahuRESPONDENT

Date of Decision: Sept. 20, 2007**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 24
- Constitution of India, 1950 - Article 227
- Hindu Marriage Act, 1955 - Section 24

Citation: 111 CWN 1091**Hon'ble Judges:** Sanjib Banerjee, J**Bench:** Single Bench**Advocate:** J. R. Chatterjee and Monaranjan Jana, for the Appellant; Jahar Chakraborty and Sabita Mukherjee, for the Respondent

Judgement

Sanjib Banerjee, J.

The husband and wife challenge the quantum of alimony pendente lite in the two revisional petitions. The husband claims that the quantum granted is beyond his means and the wife suggests that the amount directed to be paid is neither enough to make her ends meet nor commensurate with the income of the husband. By the order dated May 2, 2007 the wife's application u/s 24 of the Hindu Marriage Act, 1955 was disposed of by the 11th Additional District Judge, Alipore by directing the husband to pay Rs. 4,500/- per month on account of maintenance for the wife and the girl child beginning June. 207 and a consolidated sum of Rs. 5.000/- on account of litigation expenses. The sum of Rs. 4.500/- was apportioned as Rs. 3,000/- per month for the wife and Rs. 1.500/- for the daughter. Litigation expenses were required to be paid by September 15. 2007.

2. The husband's challenge is as to the wife's failure to establish his income. The husband asserts that there was no material before the court below to peg the husband's income at a particular level for such court to arrive at the quantification of the maintenance pendente lite. The husband claims that the principal ingredient for quantification is the assessment of the income of the spouse from whom maintenance is sought and in the absence of any rational assessment, the quantification is bound to be flawed.

3. The wife submits that she had put forth the case based on the known income of the husband as was available with her. She had relied on the husband's spending power before he left the marital home, on his qualifications as a video film editor and on her needs, given her financial status before the disruption, both on her account and on account of the daughter. The wife challenges the order on twin grounds : the provision made therein for maintenance pendente lite being paid prospectively and on the paltry amount directed to be paid by the husband. The wife draws this court into the evidence adduced before the court below and seeks to demonstrate that there was complete non-application of mind in the assessment of quantum upon the material that was available before court.

4. The husband appears to have left the matrimonial home on March 14, 2005. He filed for divorce on March 30, 2005. citing cruelty. The proceedings were instituted in a court that the wife claimed was inconvenient for her to attend and, on an application u/s 24 of the Code of Civil Procedure, 1908, the matrimonial suit was transferred to the court of the District Judge at Alipore. Shortly after the transfer, on November 9, 2005, the wife applied for maintenance pendente lite and expenses of proceedings. By an interim order of February 24, 2006 the husband was directed to pay Rs. 2,000/- per month from March, 2006 for maintenance of the wife and minor daughter. The husband applied for recalling the order of February 24, 2006 which was dismissed on August 1, 2006. The petition u/s 24 was thereafter disposed of on May 2, 2007.

5. The wife sought Rs. 12,000/- per month on account of maintenance of the mother-daughter duo, Rs. 7,000/- as litigation expenses and an additional sum of Rs. 7,500/- for repaying a loan that she claimed to have obtained for meeting her expenses. The wife claimed to be dependent on the mercy of her father and brothers for her daily subsistence and cited the helplessness and embarrassment in living off such succour as she had left her family on her own accord, and probably against the family's wishes, to enter into the union. The parties examined themselves before the court below. The wife relied on bank pass books, cheque books, mobile phone and credit card bills and like documents. The wife asserted that the material that she produced before court would show that the husband was a man of substantial means and exalted lifestyle.

6. The court below was satisfied that the husband had sufficient income and spending power during the period 2002-2003 but recorded that the husband

claimed that his monthly income declined to Rs. 9,000/-. The court below came to a conclusion that the material produced by the wife was of no relevance to assess "the present expenditure of the husband" (at page 4 of the certified copy). The court below thereafter concluded, on the assessment of the evidence, as follows :

"I do not find that any force in such submission that since the time the husband/opposite party left the house there is no possibility of documents either being given to the wife/petitioner or she procuring it by some other means."

7. Both parties have referred to the evidence adduced before the court below. The husband has drawn the attention of the court to the objections taken to the wife's claim, particularly at paragraph 10 of the objection where the husband asserted that he was formerly an employee of a company producing television programmes but such company closed down in March, 2004 and thereafter the husband earned about Rs. 2,000/- in the good months and even less in other months. The husband had admitted that he was an income tax assessee as the salary that he drew from the television company before it closed down obliged him to pay income tax, but since the loss of employment, there was no question of any income tax return being filed thereafter.

8. The wife refers to the husband not producing the documents for which he was given notice, of such refusal recorded in his cross-examination and of the inadequacy on the husband's part in dealing with the documents and accounts produced by the wife. In particular, the wife refers to the following statements made by the husband in course of the cross-examination :

"This is the notice to produce document which was received through registered post. This is marked exbt. 7. Item No. 1 of this notice relates to my personal bank account. I have not produced the document mentioned in item No. 1. Pass Book and related papers including bank papers are at the tenanted premises which I had left. I did not inform by letter that the document which item No. 1 are with my wife so I could not produce this. I have not asked for statement from 2005 till date from the bank. It is not possible to file an appointment letter and salary statement of mine to the court. I cannot say exactly since which year I am paying income tax. I have filed copy of income tax return of the last financial year only. I will not file the copy of income tax return of the previous years as per notice. I did not inform by any letter that I did not have any bank account in the ICICI Bank bearing No. 627801087166. I have not produced document mentioned in the document No. 4 of the notice. I will not file. Then says it is not possible for me to file the documents. I did not ask upto date statement of ICICI Bank relating to my account....."

9. The husband thereafter stated in his evidence that he had appointed two advocates including one from the High Court to represent him. He admitted that he had two mobile phones in his name. He claimed to have no place to stay and that he had no fixed address. Then, he added, as follows :

"..... The documents filed by my wife were not shown to me. I have deposed without perusing... the documents filed on behalf of my wife. I cannot say about the veracity of the documents filed on behalf of my wife unless I see and peruse the documents.....I had operated my accounts in different banks after I left my house. I had operated my accounts in different banks after I left my house. I had operated my bank account in Canara Bank. I had only two bank A/c one in Canara Bank and other in H.S.D.C. (HSBC?). I had also a/c in ICICI Bank. I never operated the A/C in ICICI Bank.... I never sent any money for my wife or for my daughter and also did not inquire about as to who is paying house rent as well as from where the money is coming for meeting their basic needs from the date of my leaving....."

10. The husband admitted that he had three or four insurance policies in his name, that he had not surrendered any policy, but his father pays the premium therefor. The husband's father retired in 2004. Later he said that he did not know whether the original policies were with his father since he did not have any contact with his father. As to the wife's detailed claims on account of maintenance, the husband said he was not aware as to the exact tuition fees for the daughter and whether she had a private tutor. He denied that the wife needed any money on account of electricity charges as she was residing at "her parental house".

11. The wife urges that the husband's petition should not be looked into at all for the husband having failed to pay even the paltry amount that had been directed. According to the wife, the husband failed to pay in terms of the ad-interim order on maintenance and there remains substantial sums due. Though some money has been paid during the pendency of these petitions, the wife suggests that such payment has been made so that the court does not reject the husband's petition outright.

12. The wife has relied on the following judgments reported at 68 CWN 316 (Pratima Bose vs. Kamal Kumar Bose), AIR 1987 Allahabad 130 (Jwala Prasad vs. Smt. Meena Devi & Ors.), AIR 1995 Andhra Pradesh 147 (Parchuri Rajya Lakshmi vs. Parchuri Viswa Sankara Prasad) and 2007(2) ICC 181 (Subhash vs. Sheela Devi).

13. The Pratima Bose case and the Parchuri Rajya Lakshmi case have been relied upon for the proposition that maintenance pendente lite ought to be paid from the date of notice of action for judicial separation or divorce, or at the very least, from the date of an application in such regard being filed. The Sheela Devi case has been relied upon for the principle that non-payment of maintenance allowance is a relevant consideration to refuse divorce. The Jwala Prasad case has been relied upon for the principles applicable in considering a petition u/s 24 of the 1955 Act and the scope of interference on a revisional petition from the order passed therein.

14. Both parties have invited court-to look into the evidence, though for varying purposes. It does not appear from the documents relied upon and the oral testimonies of parties that the court below has appreciated the purport and

consequence thereof. The court below failed to recognise the positive case made by the wife and the effect of the husband's refusal to disclose the documents sought or otherwise attempt to establish his income. It is not as if the court below accepted that the husband was a complete vagabond and unemployed, as the husband attempted to impress in course of his testimony. The court below accepted a statement found in the husband's evidence that at a stage subsequent to his leaving the matrimonial home, his income was Rs. 9,000/- per month, but failed to recognise that the husband had done little to rebut the evidence adduced by the wife.

15. Maintenance pendente lite and the appropriateness of the quantum thereof depend on necessity. As to what is necessary hinges on the expression, "having regard to the petitioner's own income and the income of the respondent....". Section 24 of the 1955 Act has been construed to confer authority on the court to assess what is necessary on the basis of the financial position and status of the parties. For, what is necessary for a couple used to affluence will not be what is necessary for a couple previously living in penury.

16. The court below has not adverted to this aspect of the matter. It is evident from the wife's evidence that the couple had a comfortable lifestyle before the disruption and a sum of Rs. 4,500/- per month, in the circumstances, is not commensurate with the status of the parties. It is not proper in proceedings under Article 227 of the Constitution to assume jurisdiction as in first appeal. The one irregularity of the order impugned can be corrected by requiring the husband to pay maintenance pendente lite at the rate of Rs. 4,500/- per month beginning November, 2005, since the wife applied u/s 24 of the 1955 Act around that time. The other irregularity in the order, of the failure in fixing the quantum based on assessment of the husband's income and arriving at the appropriate amount commensurate with the status and living standards expected of the wife and the daughter, has to be undone by the court below by revisiting such matter.

17. The husband's revisional petition is dismissed. The effect of such dismissal is that the quantum of maintenance pendente lite awarded by the court below cannot be reduced. The wife's revisional application is allowed in part by directing the husband to pay ad-interim maintenance at the rate awarded by the order impugned from the month of November, 2005. The matter will be considered afresh by the court below on the basis of the material before it for the purpose of assessing whether the quantum of allowance should be enhanced.

18. In a matter of such nature where the husband, the earning member of the unit leaves his wife and daughter without any means to sustain themselves, it is the duty of the court to not only ensure that the spouse and child are adequately protected by way of granting maintenance pendente lite, but also to ensure that the money recognised as due to the wife and child is paid and received. Courts are not altogether powerless to ensure that the beneficiaries of court orders actually obtain

benefit thereunder. Courts should reach out to see that a mother and toddler have the money that the court has found due, to be reached to them. The wife's revisional application succeeds as above. The court below will dispose of the matter to the limited extent for which it has been remanded within a period of three months from the deposit of an authenticated copy of this order.

19. There will be no order as to costs. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on usual undertakings.