

(2012) 07 CAL CK 0262

Calcutta High Court

Case No: C.O. No. 3266 of 2011 With C.O. No. 3756 of 2011

Sri Biman Roy

APPELLANT

Vs

Smt. Kaberi Roy

RESPONDENT

---

**Date of Decision:** July 3, 2012**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Marriage Act, 1955 - Section 24

**Hon'ble Judges:** Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** Arindam Banerjee, for the Appellant; Sibasish Ghosh, for the Respondent

---

**Judgement**

Prasenjit Mandal, J.

These two applications are at the instance of the husband and they have arisen out of the same matrimonial suit. Accordingly, they are disposed of by this common judgment. For convenience, C.O. No. 3266 of 2011 is taken up first.

C.O. No. 3266 of 2011:-

Challenge is to the Order No. 88 dated June 10, 2011 passed by the learned Additional District Judge, 7th Court, Alipore in Misc. Case No. 20 of 2005 arising out of the Matrimonial Suit No. 17 of 2004.

2. The petitioner filed a suit being Matrimonial Suit No. 17 of 2004 for dissolution of marriage against the opposite party on the ground of cruelty. The wife opposite party herein is contesting the said suit and she filed an application u/s 24 of the Hindu Marriage Act, 1955 against the petitioner praying for maintenance pendente lite at the rate of Rs. 10,000/- per month and a litigation costs of Rs. 25,000/-. The petitioner filed a written objection against the said application. Both the parties have adduced evidence in support of their respective contentions and upon analysis of evidence on record, the learned Trial Judge granted alimony pendente lite at the

rate of Rs.6,000/- per month and a litigation costs of Rs.15,000/- The said alimony will include the order of maintenance to the tune of Rs.1,500/- per month as awarded on an application u/s 125 of the Cr.P.C. filed by the wife. Being aggrieved by such orders, this application has been filed by the husband.

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

4. Upon hearing the learned Advocates for the parties and on going through the materials on record, I find that the wife / opposite party has examined three witnesses in support of her contention. The husband has also examined himself as D.W.1 stating, inter alia, that the wife has income from car business and tuition. On the other hand, he is a casual worker of a concern and he earns a nominal amount of income only. So, the application should be dismissed.

5. Upon analysis of the evidence, the learned Trial Judge has observed that the wife has no income of her own and that at present she is depending on her younger brother as her parents are now dead. The evidence of the wife is corroborated by her own brother.

6. So far as the business of the wife on car as alleged, I find from the evidence on record that the learned Trial Judge has rightly observed that the wife has no business as alleged. The brother of the wife has deposed that one car was purchased by him in the name of the wife / opposite party herein, but after marriage, the said car was gifted to him and the statement of the wife / opposite party herein has been corroborated by his brother. Since, no other evidence contrary to this, I am of the view that the learned Trial Judge has rightly observed that the wife has no income from the so called business as alleged.

7. So far as income from tuition is concerned, the learned Trial Judge has observed that it is difficult to believe that a newly married wife goes out of the house from her matrimonial home at 8/8:30 a.m. and returns at 1:30 p.m. and then she goes out of her house at about 3:00 p.m. and comes back at 9:00 p.m. The wife has denied such contention.

8. Therefore, upon analysis of the evidence on record, the learned Trial Judge has rightly held that the wife has no income of her own. I find that the said findings do not suffer from any perversity.

9. So far as income of the husband is concerned, I find that the husband has claimed that he is a casual worker.

10. Mr. Arindam Banerjee, learned Advocate for the petitioner, has submitted that the husband has filed the salary slip and from such salary slip the net income of the husband appears to be Rs.9,744/-. According to him, this paper was marked exhibit and thus, it appears so from the materials on record. However, if the said paper is perused, the gross earnings of the husband appears to be Rs.16,648/- and he makes deposit towards C.P.F., V.P.F., etc. to the tune of Rs.873/- and Rs.3,000/- only

respectively. Thus, I find that the husband is making deduction of a considerable amount from his gross earnings towards C.P.F. etc. and thus, his net pay has come down to Rs.9,744/- for the month of January 2011. From such statement, it cannot be believed that husband is a casual worker. So, his contention in this regard has been rightly rejected by the learned Trial Judge.

11. The husband has denied that he has income from as an Astrologer and by selling stones but the wife has stated that the husband has income from such sources. As the husband even did not state his income properly and the salary slip has been brought by the wife from the Office of the husband at the instance of the wife, I think that the husband is suppressing something to avoid alimony pendente lite. Accordingly, the statement of the wife, I hold, cannot be disbelieved with regard to the income of the husband. So, it is presumed that the husband has income from other sources as claimed by the wife.

12. During the argument, Mr. Banerjee, learned Advocate, appearing for the petitioner has contended that the Court did not consider the liability of the husband, that is, the liability to maintain the mother, one spinster sister and one mentally ill brother. But, I find that the mother or the spinster sister of the husband has not come forward to support the contention of the husband.

13. On the contrary, as per evidence on record, the father of the husband was an employee of the Electricity Office and he took voluntary retirement.

14. The learned Trial Judge has rightly commented that the father of the husband took voluntary retirement on health ground and certainly, he had done so by making a provision for maintenance of his wife, spinster daughter and another mentally ill son. Anyway, the husband cannot avoid his responsibility for maintaining the wife / opposite party herein.

15. The learned Trial Judge has observed that the husband has admitted at he has income more than Rs.17,000/- per month as indicated above. The husband has also income from other sources as indicated. Under the circumstances, the amount of alimony cannot be stated to be too high.

16. Mr. Banerjee has also contended that alimony pendente lite could be granted at best from 1/5th to 1/3rd of the salary. However, since the husband has not stated anything about his income from other sources and even he has not stated properly about his income of service, so, his statement cannot be accepted in this regard and the learned Trial Judge has rightly accepted the statement of the wife / opposite party herein.

17. As regards, the quantum of alimony, Mr. Sibasish Ghosh, learned Advocate, appearing for the opposite party has referred to the decision of *Rousseau Mitra v. Shrimati Chandana Mitra* reported in AIR 2004 Calcutta 61 and thus, he submits that as per observation made in paragraph no.9, there is no fixed principle for

determining the amount of maintenance pendente lite or expenses of the proceeding. The Court has to consider the status of the parties, their needs and the capacity of the husband to pay having regard to the reasonable expenses for the maintenance of the wife and the child.

18.He has also referred to the decision of Aditya Malhotra v. Namrata Malhotra reported in (2011)3 WBLR (Cal) 493 passed by this Bench and thus, he submits that as per observation therein it might be difficult for the wife to collect material to show the income of the husband. But the husband is to prove by convincing materials that he had not the income as claimed by the wife. These two decisions are also taken into consideration in the matter of deciding the quantum of alimony pendente lite to be granted.

19.However, since the mother of the husband gets pension and other benefits for her livelihood and the petitioner has also liability to maintain his spinster sister and another mentally ill brother, I am of the view that the husband should be directed to pay a sum of Rs.5,000/- only per month instead of Rs.6,000/- as observed by the learned Trial Judge.The other part of the impugned order relating to adjustment of the maintenance allowance and the litigation cost should not be interfered with.The impugned order should be modified accordingly.The husband is therefore, directed to pay a sum of Rs.5,000/- only per month as pendente lite alimony.The other part of the impugned order relating to award of maintenance u/s 125 of the Cr.P.C. and the litigation cost are not interfered with. All the arrears of alimony must be paid within 30 days from date and the husband / petitioner herein shall go on paying current alimony as per order of the learned Trial Judge. Accordingly, this 20. application is disposed of in the manner indicated above.

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

C.O. No.3756 of 2011:-

22. This application is against the Order No.3 dated September 17, 2011 in the Matrimonial Execution Case No.37 of 2011 arising out of the said Matrimonial Suit No.17 of 2004.

23. Since, an order of attachment has been passed by the impugned order, the impugned order shall remain stayed for a period of 30 days from date.If within the aforesaid period of 30 days, the petitioner pays the entire arrears of alimony, the operation of the impugned order shall remain stayed for a period of three months thereafter. If the husband fails to make current payment for the aforesaid period of three months, the learned Trial Judge is at liberty to pass appropriate orders for issuance of the order of attachment of the salary after four months from date.

24. Accordingly, this application is disposed of in the manner indicated above.

25. 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.