

Rina Sen Vs. Alope Kumar Sen

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Court : Kolkata

Decided On : Mar-03-1994

Reported in : II(1994)DMC525

Judge : Mukul Gopal Mukherji and ;Sudhendu Nath Mallick, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Section 24

Appeal No. : Civil Revisional Jurisdiction

Appellant : Rina Sen

Respondent : Alope Kumar Sen

Advocate for Def. : Utpal Bhattacharya, ;Debabrata Banerjee and ;R. Dutta, Advs.

Advocate for Pet/Ap. : Subhra Kamal Mukherjee and ;P. Sinha, Advs.

Judgement :

Mukul Gopal Mukherji, J.

1. In this revisional application the wife as petitioner has impugned an order dated April 2, 1993 passed by the learned Additional District Judge 8th Court, Alipore, South 24 Parganas in Matrimonial Suit No. 24 of 1992 only as regards the quantum of alimony pendente lite for herself and her minor son. The husband

brought the suit for divorce against the wife on the ground of cruelty.

2. In the petition for divorce filing by the husband he contended that he has been living in a joint mess with his eldest brother, sister-in-law, niece and widow mother but the wife did not like to stay in a joint mess with them and insisted on his separation. He described his eldest brother as a person highly placed in life and he himself is a bank employee. Be that as it may, as and when the present petitioner claimed alimony pendente lite in the matrimonial proceeding contending inter alia that she was not possessed of sufficient means for her own maintenance and for the maintenance of the child and further alleged that the husband being a bank employee was earning about Rs. 5,228/- per month and claimed alimony pendente lite to the tune of Rs. 1,500/- for her own and Rs. 1,000/- for her minor child and litigation cost of Rs. 2,500/-. The Trial Court ordered that she should get alimony pendente lite to the extent of Rs. 900/- only, Rs. 500/- for herself and Rs. 400/- for the minor son and the litigation cost was computed at Rs. 1,000/- and the husband opposite party was directed to pay the said alimony pendente lite from the date of the filing of the application by 10 equal monthly instalments. The litigation cost was directed to be paid in two monthly instalments of Rs. 500/-.

3. On behalf of the wife opposite party it has been contended that the amount of Rs. 900/- per month, Rs. 500/- for herself and Rs. 400/- for the school going son, was too meagre and that it ought to be increased to such a substantial amount which would be sufficient for their maintenance and upkeep. Since the male child has started going to school and his school fees in the Kindergarten class of the school amounted to Rs. 100/-, a sum of Rs. 400/- was not at all sufficient for the maintenance of the child. It has not also been proved in the Trial Court that she had any independent income of her own sufficient to meet her own expenses or she was in any part-time employment. The husband took a plea by producing the pay slip for March 1993 that his pay was Rs. 3698/- after making all deductions from his gross income of Rs. 5,228/-. It has, however, not been disclosed before the Trial Court nor before us as to what the other different deductions were about and even when we wanted to know of the learned Advocate for the husband opposite party his current pay with different break ups about deductions, that was not produced before us, even though time was taken by the learned Advocate on

the said account for about a week.

4. It has been contended by Mr. Utpal Bhattacharya, the learned Advocate for the opposite party that the husband had pleaded in the petition of objection that he had to spend a sum of Rs. 700/-per month towards the medical expenses of his ailing mother even though it was admitted that the mother earned a sum of Rs. 125/- as her pension. It has also transpired that the mother is living with his eldest brother and according to the own pleadings of the husband, the eldest brother a highly placed person, fit enough to look after the mother for all her comforts.

5. Mr. Utpal Bhattacharya appearing for the husband opposite party contended before us by placing a Division Bench Judgment in Chitra Sengupta v. Dhrubajyoti Sengupta reported in : AIR1988 Cal98 that 1/5th of the husband's net monthly average income would be the safest rule for computation of the alimony pendente lite. Unfortunately the said decision speaks otherwise. Even though under Section 36 of the Divorce Act, 1869 and under Section 39 of the Parsi Marriage and Divorce Act, 1936 such maintenance pendente lite could be awarded to the extent of 1/5th of of the husband's net monthly average income. In Section 22 of the [Hindu Marriage Act, 1955](#) no such ceiling has been fixed. Even though in Surendra v. Pushpa, (1970)2 Calcutta Law Journal 602 at page 604 it was accepted as a safe guide ordinarily in the absence of special circumstances, in Chitra v. Dhrubajyoti (ibid) a sum of Rs. 5, 758 was assessed as alimony pendente lite for the wife and Rs. 10,000/- towards the litigation costs, just because the husband was a person holding a high financial status.

6. The present case has a special feature of its own inasmuch as we are computing the alimony pendente lite not for the wife alone but for the young male child who has just started going to school. Even though 1/5th is the rule ordinarily laid down for one head that is the wife who is living separate from the husband, if we calculate for two heads we cannot fix 1/5th to be the ultimate ceiling. The legislature in its discretion has not fixed any guideline in this regard as in the case of Indian Divorce Act or the Parsi Marriage and Divorce Act and here we are always to be guided by the wide discretion vested by the statute on the Court itself. We think for the ends of justice we should increase the alimony pendente lite

to a sum of Rs. 1,200/- per month, Rs. 700/- for the wife and Rs. 500/- for the minor child which would be effective from the date of the application in the Court below. The arrears as may be found due to the wife petitioner should be paid by the husband opposite party in easy instalments of Rs. 200/- per month. The Trial Court, however, would be entitled to pass such further directions as may be deemed just and proper in case husband has not carried out the directions as contained in the order dated 2-4-1993, as it stands modified by us. The revisional application stands allowed to the extent as indicated by us. The order dated 2-4-1993 stands modified accordingly. Let a xerox copy of this judgment be made available to both the parties on usual undertaking.

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