

Tapas Chatterjee. Vs. Kakoli Chatterjee.

Tapas Chatterjee. Vs. Kakoli Chatterjee.

SooperKanoon Citation : sooperkanoon.com/911459

Court : Kolkata Appellate

Decided On : Mar-15-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 4031 of 2008

Appellant : Tapas Chatterjee.

Respondent : Kakoli Chatterjee.

Advocate for Def. : Mr. Pradip Kumar Roy, Adv.

Advocate for Pet/Ap. : Mr. Dipankar Dasgupta,; Mr. Falguni Bandopahdyay, Adv.

Judgement :

1. This application is at the instance of the petitioner and is directed against the order no.35 dated July 21, 2008 passed by the learned Judge, Fast Track First Court, Alipore in Misc. Case No.6 of 2007 arising out of Matrimonial Suit No.31 of 2007.

2. The short fact is that the petitioner and the opposite party were married under the Special Marriage Act in July, 1988. After marriage, the parties lived together and one son was born in the wedlock. Thereafter, the petitioner filed an application for divorce against the opposite party. The opposite party entered appearance and she is contesting the said matrimonial suit. She filed an application praying for alimony at the rate of Rs.20,000/- per month for herself and for her son living with

her and litigation cost of Rs.30,000/-. The wife has contended that she has no income of her own while her husband earns more than Rs.1,00,000/- per month. By the impugned order, the learned Trial Judge granted alimony at the rate of Rs.5,000/- per month only to the wife and litigation costs of Rs.12,000/-. Being aggrieved by such orders, the husband has come up with this application. Now, the question is whether the impugned order should be sustained.

3. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that a nominal amount of maintenance of Rs.5,000/- only per month has been granted to the petitioner and her minor son and a litigation costs of Rs.12,000/- only. The contention of the husband is that the wife has her own source of income, such as, the Maruti Van purchased by him is now being run by her wife to carry the children and beside income from that source, the wife has also income, such as, interest from bank deposit, postal deposit, LIC policies, etc. The husband has also contended that he never earned Rs.1,00,000/- per month and his present income is Rs.1,000/- per month only. Subsequently, he has also stated that his income is Rs.2,500/- only per month. So far as the income of the wife, as claimed by the husband, I find from the materials on record that the husband possibly purchased a vehicle (Maruti Van) which lies with the wife at present. The contention of the wife is that though the vehicle lies with her, she is not in a position to ply the said vehicle inasmuch as the husband has kept the necessary papers with him and in absence of the necessary papers of the vehicle, she is not able to ply the vehicle. She has contended that the vehicle is lying idle without papers. The husband could not show by specific averment or materials that the wife is running the said vehicle or that the papers of the vehicle have been handed over to the wife for plying the same. Under the circumstances, the contention of the wife that the vehicle is kept idle for want of papers is quite believable. So, the contention of the husband that the wife earns money from the said vehicle cannot be accepted. Similarly, the wife has totally denied that she has income from bank deposits, postal deposits or LIC policies. The husband could not show that the wife has income from such sources to maintain herself. I have stated above that the marriage between the two parties is not denied. The son is at present at the age of and around 18 years or more. The husband states that he is not bound to maintain the son. Anyway, the son is residing with the mother. There

is no dispute that the wife is, at present, residing at her fathers house. It is proved that she has no income from any source. The petitioner being the husband is, therefore, bound to maintain the opposite party.

4. As regards the income of the petitioner, he has stated that he earned Rs.1,000/- only per month previously and now Rs.2,500/- per month only. I hold that this statement is not believable at all. The husband is bound to maintain the wife. The wife lived with the husband for about 10 years. So, it is quite natural that she would know the source of income of the husband. The wife has clearly stated that the husband earns about Rs.1,00,000/- per month from different sources such as, the husband used to work as a clearing agent of customs in respect of garment business. She has deposed on oath that her husband has income from this source and her statement is corroborated by P.W.2, Debasish Chakraborty who claimed that he worked under the husband previously. On the other hand, the husband has also examined himself denying his income of Rs.1,00,000/- only and it is his contention that at present he deals in readymade garments. He purchases readymade garments from Manglahat and sells the same to different shops. His evidence is also corroborated by another witness. Thus, I find that both the parties have adduced evidence contradicting each other version. Anyway, the husband is bound to maintain the wife. He is an able-bodied person and as per his own admission at present he deals in readymade garments. He purchased readymade garments from Manglahat and sells it to different shops. So, under the circumstances, since a nominal amount of alimony has been granted, I am of the view that such finding of the learned Trial Judge is not perverse at all and there is a sound reasoning in granting such nominal amount of alimony and the litigation cost. So, I do not find any scope of interference with the impugned order. Since the learned Additional District Judge has observed that the amount of Rs.5,000/- per month has been granted to the petitioner as alimony for herself and her son, I am of the view that such amount should be treated as the alimony for the wife since her son has attained majority.

5. The learned Advocate has referred to the decision reported in 2009(2) CLJ (SC) 201 wherein it has been observed that the grant of maintenance in respect of the son would cease to apply on attaining their age of majority.

6. Save and except, such minor alteration, there is no scope of interference at all.
7. This application is, therefore, disposed of with the above observations.
8. Considering the circumstances, there will be no order as to costs.
9. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com