

Bipasha Bhowal. Vs. Biplab Bhowal.

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Court : Kolkata Appellate

Decided On : Dec-10-2010

Judge : Jyotirmay Bhattacharya , J.

Appeal No. : C.O. No. 1577 of 2008 (C.A.N. 4461 of 2009) with C.O. No. 1909 OF 2008 with C.O. No. 111 OF 2009

Appellant : Bipasha Bhowal.

Respondent : Biplab Bhowal.

Advocate for Def. : Mr. S.P Ray Choudhury; Mr. Biswajit Basu; Mr. S. Banik, Advs

Advocate for Pet/Ap. : Mr. Ashok Banerjee; Mr. Dilip Kr. Monda, Advs

Judgement :

1. Admittedly the parties are married couple. Matrimonial dispute arose between them. Husband filed a suit for divorce against the wife. Wife filed an application under Section 9 of the Hindu Marriage Act praying for restitution of conjugal right. Both the suits are being tried analogously.

2. Admittedly the parties have two children; one daughter and a son. The daughter is major. The minor son is a school going child.

3. It is also an admitted fact that the parties are living separately. The wife is staying in the matrimonial home at 65, South-end Park, Kolkata-29. Minor son is

staying with her. Though the major daughter stays in the said premises but she is staying separately in a separate mess. Husband stays at a premises at Salt Lake. Husband is a businessman having several businesses. The wife was a director of the husbands company so long as the cordial relationship was maintained between them. The wife however ceased to be a director of the husbands company when the cordial matrimonial relationship had broken down. As a result, the wifes income from the said business on account of her directorship therein was stopped. However the wife being a shareholder of the husbands business receives some dividend from the husbands business. The wife has also some income from bank interest out of the savings made by her husband under different schemes. There is nothing on record to show that the wife has any independent source of income otherwise. Whatever bank interest she is receiving from different deposits were all deposited by the husband in the name of wife.

4. Neither the husband has disclosed his actual income out of his various businesses nor the wife has disclosed the actual money she is receiving either on account of dividend or on account of bank interest. Fact remains that the husband has substantial income from his different businesses. He has various properties here and there within and beyond the State. He also invested substantial amount in different bank accounts standing in the name of the wife. Even the wife claims that she is also not aware of the deposits and/or investment made by her husband in her name.

5. The husband stated on oath that he will arrange a car for his son for his going to school from his residence and for his coming back from school to his residence.

6. Considering the aforesaid facts and circumstances this Court presumes that the husband maintains a very high standard of living and thus the wife and children are also required to be maintained according to the standard of living of the husband/father. As a matter of fact the Learned Trial Judge by his earlier order being No. 26 dated 22nd June, 2006 disposed of the wifes applications under Section 24 of the Hindu Marriage Act by directing the husband to pay a sum of Rs.8,000/- per month to the wife for her maintenance pendente lite and further sum of Rs.10,000/- per month on account of the maintenance of the son. The husband

was also directed to pay a sum of Rs.15,000/- towards litigation cost. The said order was maintained by this Honble Court. In fact Justice S. P. Talukdar (as His Lordship then was) dismissed both the revisional applications filed by the respective parties challenging the aforesaid order passed by the Learned Trial Judge on the wifes application under Section 24 of the Hindu Marriage Act.

7. Subsequently, the wife filed three applications in the said suit. In one of those applications, the wife claimed enhancement of her amount of alimony pendente lite. She claimed a further sum of Rs.12,000/- over and above Rs.16,000/- which was directed to be paid by the husband to the wife on account of the wifes alimony pendente lite and for maintenance of the child. It was stated by her in the said application that though the husband assured that he would arrange a motor car for his sons journey to school from his residence and for his coming back to residence from school, but the husband failed to keep the said assurance and as a result the wife was compelled to hire a car for her son for his going to his school from her residence and for his coming back to her residence from school. The wife claims that the wife has to pay a sum of Rs.12,000/- per month on account of a hiring charges of the said vehicle. As such she claimed enhancement of her alimony pendente lite to meet such additional expenses on account of hiring charges of the said car.

8. In the other application the wife claimed enhancement of the maintenance to the extent of Rs.14,000/- per month. She also claimed a further sum of Rs.35,000/- on account of litigation cost to meet further legal expenses of the divorce suit.

9. The third application was filed by the wife claiming a sum of Rs.50,000/- on account of litigation cost to meet the legal expenses for conducting her application for restitution of conjugal right.

10. The Learned Trial Judge was pleased to allow the wifes application for enhancement of her alimony pendente lite on account of additional expenses which the wife is required to spend for hiring a car for her son for his going to school from her residence and for his coming back to the residence from school. The Learned Trial Judge, by his order being No. 55 dated 25th March, 2008 passed in Matrimonial Case No. 20 of 2007, directed the husband to pay further sum of

Rs.8,000/- per month from the month of December, 2007 in favour of the wife on account of hiring charges of the said car in addition to the payment of the alimony pendente lite of the wife and/or cost of maintenance of the child which the husband was required to pay as per the direction passed by the Learned Trial Judge earlier. Thus the husband, in fact, was required to pay a total sum of Rs.16,000/- + Rs.8,000/- = Rs.24,000/- per month from December, 2007. The wife was also allowed to withdraw a sum of Rs.2,41,900.69 paise lying in her account at Standard Chartered Bank, Salt Lake. She was also allowed to operate the said bank account.

11. Both the husband and the wife challenged the said order by filing their respective revisional applications. The wife's application was registered as C.O. 1577 of 2008. The husband's application was registered as C.O. No. 1909 of 2008. The husband has also filed an application for disclosure of additional evidence to show that the wife has sufficient income to maintain herself and as such her prayer for enhancement cannot be allowed. The said application which was filed in connection with the wife's revisional application being C.O. NO. 1577 of 2008 was registered as C A N No. 446 of 2009. Petitioner's prayer for bringing additional materials on record is allowed. Further material disclosed therein is thus considered along with C.O No. 1577 of 2008.

12. The husband has also filed another revisional application being C.O. No.43 of 2009 challenging the said order being No. 55 dated 25th March, 2008 by which the husband was directed to pay a sum of Rs.10,000/- per month to the wife on account of her alimony pendente lite. The husband was also directed to pay a further sum of Rs.10,000/- per month towards the maintenance of the child. Thus the alimony pendente lite of the wife was enhanced by Rs.2,000/- over and above the earlier amount which the husband was paying to the wife in terms of the earlier order of the Court. Similarly, the cost of maintenance of the child was enhanced by Rs.2,000/- i.e. from Rs.8,000/- to Rs.10,000/- per month. The husband was also directed to pay a further litigation cost of Rs.5,000/- to the wife to meet the litigation expenses of the divorce suit.

13. The other revisional application being C.O. No. 111 of 2009 is directed against an order being No.43 dated 16th December, 2008 by which the husband was directed to pay the sum of Rs.30,000/- to the wife on account of litigation cost for meeting the legal expenses of the wifes application for restitution of conjugal rights.

14. Since all these applications are correlated, this Court has taken up all the aforesaid revisional applications analogously.

15. Heard Mr. Ray Choudhury, learned Senior Advocate appearing for the husband and Mr. Banerjee, learned Senior Counsel, appearing for the wife. Considered the materials on record including the order impugned.

16. Let me now consider as to how far the Learned Trial Judge was justified in passing the impugned orders in the facts of the instant case.

Re: C.O. 1909 of 2008 & C.O. 1577 of 2008 These two revisional applications are directed against the order of enhancement of alimony pendente lite for meeting the hiring charges of car for arranging the journey of the son from his residence to school and for his coming back to his residence from the school. Though the wife claimed a sum of Rs. 12,000/- on this account, but the Learned Trial Judge allowed Rs.8,000/- on this account.

17. Mr. Ray Choudhury, learned Senior Counsel, appearing for the husband, submitted that the wifes such prayer should have been rejected as she suppressed the fact regarding her purchase of a Maruti Car during the pendency of the litigation. Mr. Ray Choudhury submitted that since she owns a car, she was not required to hire a car for his sons journey from her residence to his school and for his coming back to her residence from school.

18. Technically Mr. Ray Choudhury is correct in his such submission. But fact remains that the wife has to spend substantial amount for maintaining the car. She has to employ a driver to drive the car. She has to purchase fuel, mobile etc. for the movement of the car. She has to spend some other money for the maintenance of the car. If such expenses are taken into consideration, then this

Court cannot hold that the grant of Rs.8,000/- by the Learned Trial Judge on this account, is unreasonable and/or unjustified.

19. The requirement a car for the son is admitted by his father who himself offered to provide a car for his son for his going to school and for his return to his residence. As such the husband cannot deny his responsibility to bear the expenses which is required for the said purpose. The proposal which was given by the Husband to provide a car for his sons journey to his school and also for his return from school to his residence, Cannot be accepted by this Court as even if such an order is passed, such order is incapable of implementation, in the event such order is not complied with by the husband. Again, when a car is available to the wife at her disposal, it will be better if that car is utilised for the aforesaid purpose at the cost of the husband. As such this Court does not feel any necessity to interfere with the said impugned order. Both the aforesaid revisional applications thus stand dismissed.

20. Re: C.O. 43 of 20097 In this revisional application the husband has challenged the order being No. 65 dated 25th September, 2008 by which the wifes prayer for enhancement of alimony pendente lite and/or cost of maintenance of the child was allowed. The husband was directed to enhance the amount of alimony pendente lite of the wife by Rs.2,000/-. Thus the wife will now get a sum of Rs.10,000/- instead of Rs.8,000/- which she was receiving so long in term of the earlier order the Court. Similarly the husband was also directed to enhance the cost of maintenance of the child by Rs.2,000/-. Thus the cost of maintenance of the child was enhanced from Rs.8,000/- to Rs.10,000/-. The husband was also directed to pay a further sum of Rs.5,000/- to the wife on account of further litigation costs of the divorce suit.

21. This Court does not find any unreasonableness in the said impugned order as this Court finds that the husband has sufficient income from his business and he is maintaining a very high standard of living by maintaining number of cars and various properties in different States, and is also capable of investing substantial amount of money in the name of his wife. This Court thus does not want to disturb the said impugned order particularly because of the fact that the husband has not

disclosed his actual income before this Court. Though this Court finds that the wife has some income either on account of the dividend or on account of the interest from bank deposits, but still then this Court holds that the amount which she receives is not sufficient to maintain herself and her son as per standard of living of the husband. That apart, considering the present hike in the price of daily necessity, this Court cannot hold that the enhancement of Rs.4,000/- per month on account of the wifes maintenance pendente lite and/or the cost of maintenance of the child, is exorbitant and as such this Court does not feel any necessity to interfere with the said order.

22. Considering the number of litigations and the interlocutory proceedings therein as well as the number of time on which the wife had to come before this Court for redressal of her grievance, this Court holds that the grant of further sum of Rs.5,000/- towards the litigation cost to meet the legal expenses of the divorce suit, was justified. Accordingly this Court refuses to interfere with the said impugned order. The revisional application thus stands rejected.

Re: C.O. No. 111 of 2009 In this revisional application the husband has challenged the order being No. 43 dated 16th December, 2008 by which the husband was directed to pay sum of Rs.30,000/- to the wife to meet her litigation expenses in connection with her application under Section 9 of the Hindu Marriage Act. It is rightly pointed out by Mr. Ray Choudhury that when both the divorce suit and the application for restitution of conjugal rights filed by the respective parties are being heard analogously, one set of litigation cost will be sufficient to maintain the expenses of both the aforesaid litigations which are being heard analogously as one set of evidence would be required to be given by the parties and the parties were also not required to engage different set of Lawyers in different suits. Technically this Court finds substance in such submission of Mr. Ray Choudhury, but this Court cannot keep its eyes shut over the number of times when the wife had to approach this Court for ventilating her grievances. As a matter of fact, both the parties have engaged very senior Lawyers of the Court who are also assisted by their respective juniors. Though principally this Court agrees with the submission of Mr. Ray Choudhury that the wife cannot claim litigation cost separately in her suit for restitution of conjugal right as the said suit is being heard

analogously with the divorce suit, but still then, considering the huge amount of money the wife is required to pay to his Counsel to conduct various litigations here and there, in connection with both the aforesaid suits, this Court does not think it fit to interfere with the impugned order. However it is made clear that this litigation cost of Rs.30,000/- will be the consolidated costs of both the aforesaid litigations. Since the wife has already got further sum of Rs.5000/- toward litigation cost in the divorce suit, the husband is entitled to get adjustment of his said sum of Rs.5,000/- from Rs.30,000/-. Thus the husband is required to pay a sum of Rs.25,000/- towards litigation cost in addition to the litigation cost of Rs.5000/- which was granted to her in the divorce suit as mentioned above.

23. The revisional application thus stands disposed of with the above modification. All the aforesaid four revisional applications including the application filed in connection with the C.O. 1577 of 2008 stand disposed of, accordingly.

24. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.

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