

Arun Kumar Paul. Vs. Aipta Paul.

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Court : Kolkata

Decided On : Jul-05-2011

Judge : Prasenjit Mandal, J.

Acts : Code of Civil Procedure (CPC) , Section 125

Appeal No. : C.O. No. 1863 of 2011

Appellant : Arun Kumar Paul.

Respondent : Aipta Paul.

Advocate for Def. : Mr. Aniruddha Chatterjee. Adv

Advocate for Pet/Ap. : Mr. Ashis Kr. Roy; Mr. Abhishek Banerjee. Advs

Judgement :

1. Challenge is to the order dated April 19, 2011 passed by the learned Additional District Judge, 5 th Court, Alipore in Matrimonial Suit No.14 of 2001 thereby directing the petitioner to pay alimony at the enhanced rate to the opposite party.

2. The short fact is that the petitioner was married to opposite party in the year 1998 and one child was born in the wedlock. Due to some matrimonial problems, the petitioner filed a matrimonial suit for dissolution of marriage by a decree of divorce. The opposite party entered an appearance and she is contesting the said matrimonial suit. She filed an application claiming maintenance.

3. Upon hearing both the sides, the learned Trial Judge granted alimony of Rs.600/- per month more, in addition to the alimony already granted in favour of the opposite party in a proceeding under Section 125 of the Cr.P.C. to the extent of Rs.2200/-, so that the total maintenance would will become Rs.2800/- per month for herself and the child. Being aggrieved by that order, the wife referred a revisional application for enhancement of the alimony and this Hon'ble Court enhanced the amount to Rs.3000/- per month for herself and her minor child. Thereafter, the wife / opposite party herein filed another application for enhancement of alimony. That application was allowed by the impugned order.

4. Being aggrieved, this application has been preferred by the husband.

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

6. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that by the impugned order, the learned Trial Judge has granted alimony to the wife to the extent of Rs.2500/- per month and for the minor child at the rate of Rs.3500/- per month, in all Rs.6000/- per month from the month of July 2010. The learned Trial Judge has also directed the husband to pay Rs.5000/- as litigation cost to the wife within one month from the date of the order.

7. Admittedly, the wife is a graduate with honours in English and the husband is an M.B.B.S. Doctor doing private practice. The husband has contended that his monthly average income is of Rs.12000/- and he has furnished the copy of the Income Tax Return to that effect. The learned Trial Judge has disbelieved in the contention of the husband as to his income on the ground that he is an M.B.B.S. doctor and his income cannot be to the extent of Rs.12000/- per month. Though, the learned Trial Judge did not observe anything as to the present income of the husband yet in consideration of the Income Tax Return for the financial year 2008-09, it could be gathered that his current income must have increased. The husband also did not file the copy of the last Income Tax Return. So, he has suppressed the current income. In any way, it cannot be less than Rs.12000/- per month.

8. As regards, the income of the wife, there is no documentary evidence. The wife has stated that she has no income. On the other hand, the husband has contended that the wife earns Rs.10000/- per month by tuition. Though, it may be the situation that the wife earns something by private tuition, as there is no document regarding regular income, it could at best be asserted that she is earning something by private tuition only for the purpose of survival. So, it cannot be treated as a regular income.

9. As regards, the quantum of alimony, the learned Trial Judge has granted Rs.2500 per month for the wife. The last enhancement as passed by this Hon'ble Court was to the extent of Rs.3000/- per month for the wife and her child on August 11, 2005. Since then the price hike of essential commodities including the cost of education has occurred to a considerable extent. The husband did not deny this fact specifically. He did not raise any dispute relating to the educational expenses of the child. The wife has claimed that she has to pay Rs.18000/- approximately per year for the educational expenses for the child because her son is reading in a English Medium School near Airport in Class VII and so, the wife should get Rs.1500 per month for the educational expenses to which the husband did not raise any dispute as per observation of the learned Trial Judge. The learned Trial Judge has granted alimony for the child at the rate of Rs.2000/- for food, medical expenses and for other purposes. This amount of Rs.2000/- per month for the child, I hold, cannot be said to be excessive.

10. Previously, the husband paid a nominal amount of litigation cost of Rs.3000/- and by the impugned order, the learned Trial Judge has granted a litigation cost of Rs.5000/- only. Upon hearing both the sides I am of the view that this amount of litigation cost cannot be stated to be excessive at all.

11. In that view of the matter, I am of the opinion that the quantum of alimony for the wife and the child and the litigation cost as awarded by the learned Trial Judge cannot be stated to be excessive at all.

12. Therefore, there is no scope of interference with the impugned order. This revisional application is, therefore, dismissed.

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

14. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

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