

CASE NO.:
Appeal (civil) 4909 of 2005

PETITIONER:
Rita Dutta & another

RESPONDENT:
Subhendu Dutta

DATE OF JUDGMENT: 11/08/2005

BENCH:
ASHOK BHAN & S.B. SINHA

JUDGMENT:
J U D G M E N T
[@ SLP(C) NO.11708 OF 2005]

BHAN, J.

Leave granted.

This appeal is directed against the order passed by the High Court of Calcutta in C.O. No.2451 of 2003 whereby the High Court has modified the order passed by the trial Court granting maintenance allowance pendente lite. The High Court by the impugned order has held that appellant no.1 i.e. wife of the respondent-husband would not be entitled to any maintenance pendente lite as well as the litigation cost and amount of maintenance allowed to his son Saurav Dutta has been reduced from Rs.5,000/- to Rs.1,500/- per month. The maintenance allowance of the second son Gaurav Dutta has been maintained.

Appellant no.1 and respondent were married according to Hindu customary rites and ceremonies in Calcutta on 26.02.1982. Out of the wedlock two sons namely, Saurav Dutta and Gaurav Dutta were born. Saurav Dutta is a student of West Bengal National University of Juridical Sciences, Kolkata and has taken a study loan of Rs.2,43,000/- to pursue the studies whereas the younger son Gaurav Dutta is currently a student of the 1st year, Zoology (Hons.), Zakir Hussein College, Delhi. Appellant no.1 was working as a Stenographer in the Indian Tourism Development Corporation, a Central Government Undertaking, since 15.07.1979 and was posted at Hotel Airport Ashok, Calcutta. She left her service on 01.07.1992 under the Voluntary Retirement Scheme to devote all her time and energy for the upbringing of her sons and to look after her husband.

After 20 years of marriage on 05.04.2002 respondent no.1 initiated divorce proceedings under Section 13 of the Hindu Marriage Act, 1955 [for short "the Act"] alleging therein that the appellant no.1 had been meeting out unmitigated and relentless cruelty, both mental and physical. All these allegations have been denied by appellant no.1. Respondent left the matrimonial home and started residing with his brother's family at 6B, Waverly

Lane, Taltola, Calcutta.

Appellant no.1 filed an application under Section 24 of the Act in the Court of 13th Additional District Judge at Alipore, Calcutta claiming maintenance for herself and her two sons from the respondent. She claimed maintenance of Rs.25,000/- per month for herself and her two sons and Rs.10,000/- towards litigation expenses. Admittedly that respondent was earlier working with a well known firm of architect but later on resigned his job and started his own consultancy firm. It was alleged that he was maintaining a big office in the Central Calcutta and a number of employees were working under him. It was further averred that he was associated with various industrial offices and firms and his income was more than Rs.1,00,000/- per month.

Respondent in reply stated that appellant no.1 was running the business of selling saris from the place of her residence. That she had number of fixed deposits and U.S. 64 units. She had purchased ornaments worth Rs.50,000/- out of her own income. That out of the income derived by the appellant No. 1 she could maintain herself and her two sons comfortably. Regarding his own income it was stated that his net income was Rs.5,000/- only after defraying the expenses of his office.

Trial Court in the absence of any documentary evidence as to the income of the appellant no.1 and disbelieving the statement made by the respondent regarding his income awarded maintenance allowance Rs.3,000/- per month for appellant no.1, Rs.2,500/- for the younger son Gaurav Dutta and Rs.5,000/- per month for the elder son Saurav Dutta.

Respondent being aggrieved by the order of the trial Court filed an appeal in the High Court which has been partly accepted by the impugned order. The High Court concurred with the finding recorded by the trial Court that the respondent had failed to disclose his true income. He failed to produce the balance sheet as well as the profit and loss account of his business. It was observed that it could not be believed that an architect who is running his own consultancy business employing a number of employees, does not maintain the profit and loss account of his business, though he is an assessee under the Income-tax Act. The Court refused to believe the income of the respondent of Rs. 5,000/- per month. The High Court also came to the conclusion that even the appellant No. 1 had not disclosed her true income. Keeping in view the facts that she had her own income it was held that she would not be entitled to any maintenance allowance pendente lite. The maintenance allowance of Rs.2,500/- per month granted to the younger son Gaurav Dutta has been maintained and the maintenance allowance of Rs.5,000/- given to the elder son Saurav Dutta has been reduced to Rs.1,500/- per month on the ground that he had already raised study loan of Rs.2.43,000/- which is to be repaid in 60 equal monthly instalments after a moratorium

period which is the course period plus one year after completion of the course or six months after getting job whichever is earlier.

Being aggrieved the appellant no.1 and Saurav Dutta (elder son) have come up in appeal.

Learned counsels for the parties have been heard.

We agree with the findings recorded by the High Court as well as the trial Court that the respondent had not disclosed his true income. He has failed to produce the balance sheet as well as profit and loss account which could show his real income. The income of Rs. 5,000/- disclosed by the respondent seems to be grossly inadequate keeping in view that he had standing of more than 25 years as a professional architect. The business of printing or selling saris by appellant no.1 from her house does not seem to be a big or lucrative business and from the income of this business she cannot maintain herself and her two growing sons pursuing their studies in prestigious institutions. No doubt she has roof over her head but she requires money to meet other day-to-day requirements and medical expenses. The sum of Rs.4,000/- awarded to the two sons of appellant No. 1 as maintenance pendente lite is inadequate keeping in view today's price index. Accordingly, we modify the order passed by the High Court and increase the maintenance allowance of Saurav Dutta who is studying in West Bengal National University of Juridical Sciences, Kolkata to Rs.3,000/- per month instead of Rs.1,500/- per month granted by the High Court. Respondent is also directed to pay maintenance allowance of Rs.1,500/- per month to appellant no.1 as well. The maintenance allowance granted to the second son Gaurav Dutta of Rs. 2,500/- per month is maintained.

In terms of this order appellant no.1 would be entitled to Rs.1,500/- per month, Saurav Dutta (elder son) would be entitled to Rs.3,000/- per month and the Gaurav Dutta (younger son) would be entitled to Rs.2,500/- per month, total of which comes to Rs.7,000/- per month. Modified order will take effect from the date of filing of application under Section 24 of the Act.

Respondent is directed to pay the maintenance allowance by 10th of every month. Arrears be paid in the next six months in equal instalments along with the monthly maintenance allowance. Appellants shall also be entitled to Rs.10,000/- as litigation expenses, the same be paid, if not already paid.

This appeal is allowed in the above terms with costs which is assessed at Rs.5,000/-.