

**SUPREME COURT OF INDIA**

Sipra Bhattacharyya

Vs.

Dr. Apares Bhattacharyya

C.A.No.307 of 2009

(Tarun Chatterjee and H.L.Dattu JJ.)

19.01.2009

**ORDER**

1. Leave granted.

2. The appellant, being the wife of the respondent, has filed a Special Leave Petition seeking leave to appeal from the final order dated 18<sup>th</sup> of September, 2008 passed by the High Court of Calcutta in C.O. No. 2052 of 2003. By the impugned order, the aforesaid Civil Revision Case which was filed under *Article 227 of the Constitution* at the instance of the husband/respondent against an order dated 30<sup>th</sup> of May, 2003 passed by the learned Additional District and Sessions Judge, Alipore was disposed of by directing the trial court to dispose of the suit for divorce preferably within a year from the date of supply of a copy of that order. Be it mentioned herein that the order of maintenance passed by the Additional District Judge, Alipore by the order dated 30<sup>th</sup> of May, 2003, the wife/appellant was granted maintenance pendente lite at Rs. 4000/- per month.

3. For proper disposal of this appeal, which relates to enhancement of maintenance payable by the husband to the wife/appellant, the facts which are necessary to be stated are as follows:

“The parties were married on 20<sup>th</sup> of September, 1978. The husband/respondent has filed a petition for divorce on the grounds mentioned in the said petition. According to the wife/appellant, the husband/respondent is a scientist and has been earning a handsome salary of more than Rs. 40,000/- per month. Whereas, the appellant, although highly educated, claimed that she, being the housewife with absolutely no source of income, having been left entirely on her own to fend herself, had to file an application under Section 24 of the Hindu Marriage Act (in short, "the Act") seeking alimony pendente lite.”

4. By an order dated 30<sup>th</sup> of May, 2003, the application under Section 24 of the Act was partly allowed and the appellant was awarded by the trial Court a sum of Rs. 4000/- per month. Subsequently, i.e. after five years, the appellant found that the amount awarded was

not sufficient for her sustenance, and accordingly made an application in the month of April, 2008 in the Court of the learned Additional District Judge, Alipore seeking enhancement of the maintenance pendente lite, which was already awarded in the year 2003.

5. It is not in dispute that the original order granting Rs. 4000/-per month as maintenance was challenged by the wife/appellant in the High Court of Calcutta in revision, which came to be registered as C.O. No. 2052 of 2003.

6. By the impugned order, the learned Judge of the High Court disposed of the aforesaid Civil Revision Case, inter alia, by directing as follows:

“After considering the submissions made by the learned advocates appearing on behalf of the parties and upon perusing the instant application and the order impugned, I am of the opinion that for the interest of justice the learned court below may be directed to hear out and dispose of the Miscellaneous Case No. 29 of 2001 arising out of Matrimonial Suit No. 43 of 2001 as expeditiously as possible, preferably within a period of ten months, but not later than twelve months from the date of communication of this order without granting unnecessary adjournments to the parties.

The time-frame indicated above shall be peremptory in nature and it shall not be open to the learned court below to extent the same even on consent of the parties.

In view of the above direction it shall not be open to the opposite party to press for any enhancement of the existing amount of alimony pendente lite before the learned Court below.

The application stands disposed of in terms of the directions given hereinabove.”

7. It is against this order of the High Court that the wife/appellant has come up before us by way of a Special Leave Petition, which on grant of leave, was heard in presence of the learned Counsel for the parties. In our view, the High Court was not justified in passing the impugned order in the manner it has done. It is not disputed that the application under Section 24 of the Act was partly allowed by the trial Court in the year 2003 i.e. at least five years back. She has already filed an application before the trial Court for enhancement of her maintenance from Rs. 4000/-per month.

8. In the application for enhancement, the wife has also claimed that since the husband has been earning more than Rs. 80,000/- per month now, the maintenance amount should also be increased. After examining the impugned order of the High Court, we have no other alternative but to say that virtually, the application filed by the wife/appellant for enhancement of the maintenance, which is pending, has been rejected. Furthermore, it is common experience that in spite of directions given by the High Court, for the reasons best known, directions made by it cannot be carried out. In any view of the matter, when the application for enhancement of the maintenance of the amount to the wife/appellant was

pending in the Court, it was its duty to go into that question and dispose of the said application before the suit for divorce is disposed of by it. Mr. Ranjan Mukherjee, appearing on behalf of the husband/respondent, submits that if the impugned order of the High Court at this stage is set aside, the disposal of the Matrimonial Suit shall be unnecessarily delayed. Considering this aspect of the matter, we therefore dispose of this appeal in the following manner:

“(1) The wife/appellant shall be entitled to Rs. 7000/- per month instead of Rs. 4000/- per month from the date of filing the application under Section 24 of the Act.

(2) The arrears of maintenance i.e. difference of Rs. 3000/- per month i.e. from Rs. 4000/- to Rs. 7000/- would be paid/deposited by the husband/respondent within three months from this date to the wife/appellant. Till the decision of the suit, the husband shall go on paying/depositing @ Rs. 7000/- per month to the wife/appellant subject to any further order that may be passed in the event, the suit is not decided by the Court within the time specified herein below or increase of the said maintenance of Rs. 7000/- per month is necessitated for any reason whatsoever.

(3) The trial Court is directed to dispose of the suit positively within a year from the date of supply of a copy of this order to it without granting any unnecessary adjournments to either of the parties.

(4) The application for enhancement of the maintenance filed by the wife/appellant which is now pending before the trial court for adjudication is, therefore, disposed of.

(5) The order dated 30<sup>th</sup> of May, 2003 passed by the Additional District Judge, Alipore which was under challenge before the High Court in revision by which the maintenance of Rs. 4000/-per month was granted to the wife/appellant is also modified to the extent indicated above.”

9. With the aforesaid directions, the appeal is disposed of. There will be no order as to costs.