

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**C.O. No. 1169 of 2021
Sri Samit Kapoor
Vs.
Punam Kapoor Nee Bansal
With
C.O. No.528 of 2021
Punam Kapoor Nee Bansal
Vs.
Sri Samit Kapoor**

For the petitioner
in C.O. No.1196 of 2021 and
Opposite party
in C.O. No.528 of 2021

: Mr. Biswarup Dasgupta,
Mr. Dwaipayan Basu Mallick,
Mr. Arkaprava Sen,
Mr. Subhankar Das

For the opposite party
in C.O. No.1196 of 2021 and
petitioner in
C.O. No.528 of 2021-07-15

: Mr. Tanmoy Mukherjee

Hearing concluded on

: 08.07.2021

Judgment on

: 19.07.2021

Sabyasachi Bhattacharyya, J:-

1. The present revisional applications have been filed against the same order of alimony granted by the Trial Court, awarding Rs.1 lakh for the wife and the child from the date of the impugned order and litigation costs of Rs.40,000/-.

- 2.** C.O. No.1169 of 2021 has been filed by the husband. Learned counsel for the husband submits that the wife suppressed her income. In the alimony application, the wife denied having any income but, upon the documents and affidavit-of –assets of the parties coming on record, it was revealed that the wife had several bank accounts. Pages 130 to 147 of the revisional application and pages 148 of 167 of the same are annexures reflecting the wife’s accounts respectively with the HDFC and the Kotak Mahindra Banks.
- 3.** At page 129 of the revisional application, the wife’s Income Tax return indicates that her gross annual income is Rs.1,15,959/- , whereas the income from interest and investments, including a fixed deposit worth Rs.19,50,000/-, was suppressed in the IT returns, it is argued. The Kotak Mahindra Bank account has not been disclosed in the initial stages of the alimony application.
- 4.** By placing reliance on the wife’s evidence on further affidavit, from pages 173 to 175 of the revisional application, learned counsel for the husband points out several admissions and evasive denials made by the wife, for which adverse inference ought to have been drawn against her, it is submitted.
- 5.** At page 98 of the revisional application, the affidavit-of-assets of the wife disclose an admission of several instalments of previous payments made by the husband during the pendency of the alimony application as well. Hence, the wife is not entitled to alimony from the date of the application, in any event.

- 6.** Learned counsel for the husband contends that the husband has been paying the educational expenses of the minor child of the parties all along and disclosed his income of around Rs.4 lakh per month in his affidavit-of-assets, particularly, at page 82 of the revisional application. However, due to the current pandemic situation, the condition of the husband's business has deteriorated.
- 7.** Learned counsel for the petitioner places reliance on *Rajnish Vs. Neha and another*, reported at (2021) 2 SCC 324, in particular paragraphs 65, 72.8, 77, 78, 81 and 96 thereof, and argues that the alimony ought to be awarded from the date of the application only in the event of destitution of the wife.
- 8.** In the present case, it is argued by the husband, the wife is not a destitute at all; rather, she has a lavish lifestyle. It is contended that the wife is residing with the minor child of the parties at the husband's property located at Hindustan Park and the husband's car is being used by the wife.
- 9.** Moreover, the expenses shown for the child are inflated. Since the child is admittedly autistic, she is sent to school in the personal vehicle of the parties. As such, the charges shown for transport in the school vehicles are superfluous. That apart, it is reiterated that the husband has, all along, been providing the educational and medical expenses of the child.
- 10.** Hence, learned counsel for the husband contends that the impugned order of alimony ought to be set aside. However, the husband is ready

to bear the educational expenses as well as the medical expenses of the child of the parties, as and when required, directly to the school authorities and/or to the institutions where the child is being treated.

- 11.** C.O. No.528 of 2021 is filed by the wife on the primary allegation that the Trial Court ought to have granted alimony not from the date of the order but from the date of the application. In this context, learned counsel places reliance on *Jasbir Kaur Sehgal (Smt.) Vs. District Judge, Dehradun and others*, reported at (1997) 7 SCC 7 and contends that the wife, as held by the Supreme Court, is generally entitled to alimony from the date of application, unless there is any fault on the part of the wife herself. In the present case, there being no fault on the part of the wife in delaying the proceeding, there was no justification for the court below to grant alimony from the date of the impugned order and deprive the wife and the child from the expenses borne by them during pendency of the alimony application.
- 12.** It is further contended on behalf of the wife that she has disclosed the break-up of expenses of the wife as well as the child elaborately. The relevant portions of the alimony application at page 28 and the affidavit-of-assets of the wife at page 48, both of C.O. No.528 of 2021, are placed in support of such contention.
- 13.** Learned counsel for the wife argues that the husband suppressed his income and places reliance on the annexures at pages 117, 125 and 126 of C.O. No.528 of 2021 in that regard. The child's expenses as well as severe autism, which is deteriorating day by day, is borne out

by the annexures at Volume-II of C.O.528 of 2021, from pages 200 to 214A thereof, it is contended.

- 14.** Learned counsel for the wife next cites a judgment rendered by a co-ordinate Bench of this Court in *Ashrukana Das Vs. Raj Kumkar Das*, reported at (2016) 1 CLJ 383, in support of the proposition that the status of the parties are to be looked into while adjudicating applications under Section 36 of the Special Marriage Act, just as in deciding applications under Section 24 of the Hindu Marriage Act. Paragraphs 5, 6 and 9 of the said judgment are specifically stressed by learned counsel in this context.
- 15.** Upon hearing learned counsel and perusing the materials on record, it is clear that the wife is living a sufficiently luxurious life. It has been disputed by the wife that she is residing at the husband's property and contended by the wife that the property is of joint ownership, both of the husband and the wife. Either way, such residence is situated at Hindustan Park, in the heart of one of the posh areas of the city of Kolkata. It has not been denied that the wife has been using the husband's car for conveyance, for which the husband is bearing the expenses. Although there may be doubt as to whether the child uses a school vehicle to justify the charges for such transport, in view of such transport charges being shown to be deducted by the school, as borne out by the documents pertaining to school fees produced by the wife, it cannot be construed that the charges for such transport are merely superfluous and exaggerated.

- 16.** As far as the proposition laid down in *Jasbir Kaur Sehgal* (supra) is concerned, it was held therein that the wife should normally be entitled to alimony from the date of the application unless there is any fault on the part of the wife in delaying the matter or otherwise. However, the fault of the wife cannot be the sole deciding factor in ascertaining whether the wife is entitled to alimony from the date of the order or the application. It has been held by the Supreme Court that, generally, alimony should be granted from the date of the application. However, in the instant case, the husband has admittedly been paying substantial amounts in *lieu* of the maintenance of the wife as well as for the child, including educational as well as medical expenses. Hence, there is no scope for granting alimony from the date of the application. Such grant would amount to undue enrichment of the wife at the expense of the husband since the period of pendency of the alimony application was covered by the payments made by the husband.
- 17.** As far as the respective status of the parties are concerned, although the husband is earning substantial amounts as per the disclosures made in his affidavit-of-assets and there is no direct proof of any deterioration in the current condition of the business, the materials on record indicate that the wife is leading a high life. She resides at Hindustan Park, regularly uses the husband's car for conveyance and has been looking after the child. The child studies in a reputed school and the medical needs of the child are being taken care of.

- 18.** In such view of the matter, this court finds that the wife does not qualify for getting alimony for herself within the contemplation of Section 36 of the Special Marriage Act, since the wife has sufficient income to maintain herself. Moreover, adverse inference ought to have been drawn by the Trial Court against the wife for suppression of her income from the interests derived from her huge investments, fixed deposits and bank balance, which are betrayed by her admissions in evidence, coupled with the materials disclosed by the wife in and with her affidavit of assets.
- 19.** As far as the requirements of the child are concerned, undoubtedly the same should be borne out by the parents in ratio of their respective incomes. However, in view of no clear picture of the actual income of the parties having come out from the affidavits-of-assets and documents filed in the court below, it should be assumed that the husband ought to bear the expenses of the child in view of his liability as a father and since he has substantial earnings as compared to his wife.
- 20.** In view of the educational and other expenses of the child, including the medical expenses regularly required for treatment of the condition of the child, the amount of Rs.50,000/-, as granted by the Trial Court for the education of the child alone ought to be sufficient for the time being.
- 21.** Accordingly, C.O. No. 528 of 2021 and C.O. No.1169 of 2021 are disposed of by modifying the impugned order, bearing Order No. 34

dated February 10, 2021 passed by the Additional District Judge, Tenth Court at Alipore, District- South 24-Parganas in Miscellaneous Case No.664 of 2018, in connection with Matrimonial Suit No.3101 of 2018, to the extent that the husband shall, from the date of the impugned order, that is, from the month of February, 2021 pay maintenance for the child of the parties at the rate of Rs.50,000/- per month, including all expenses of the child. The litigation costs granted by the Trial Court, to the tune of a one-time payment of Rs. 40,000/-, is sustained. However, the monthly amount of Rs. 50,000/- granted as alimony to the wife is set aside. The husband shall clear all arrears from the date of the impugned order till the month of June, 2021, if any, in respect of the modified amount of Rs. 50,000/- for the minor child by July 31, 2021. In the event excess payment has been made by the husband in the meantime pursuant to the impugned order, the same shall be adjusted from the arrears and/or the current alimony to be paid henceforth paid by the husband. The first of the instalments of Rs.50,000/- per month as maintenance for the child will be paid by the husband for the month of July, 2021 by August 15, 2021. The husband shall thereafter go on paying an amount of Rs.50,000/- in *lieu* of maintenance of the child by the fifteenth of each succeeding month for which the alimony falls due.

- 22.** It is, however, made clear that this order shall remain in effect till disposal of the Matrimonial Suit and, in the event there is any substantial increase in the medical expenses of the child subsequent

to this order, the wife would be at liberty to approach the Trial Court, with cogent proof, for a direction upon the husband to pay such expenses, subject to the satisfaction of the Trial Court as regards the actual necessity of the alleged expenses.

- 23.** There will be no order as to costs.
- 24.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)