

Civi Misc Case 03 of 2023
(Arising out of Mat Suit 8 of 2023.)

Order No. 26

Dated 20.07.2023

Ld. Lawyers for both the parties are present.

O.P / Husband is personally present and he files his affidavit of assets and liability .

Similarly, petitioner/wife's Ld. lawyer files certified copy of affidavit of assets and declaration as filed by both the parties in the M.R. Case No 09/2021 before the Court of Ld. J.M. Mirik.

This date stands for hearing of the Misc.Case and accordingly the same is taken up for hearing .

Ld lawyers of both the parties submits that they do not want to examine their respective parties for adducing evidence and pray for disposal of the instant case on the basis of the averments of their pleadings and their affidavits of assents and liabilities .

Ld. Lawyer for the petitioner/ wife, who is the respondent in the Mat. Suit, submits that although in terms of final order of the M.R. Case NO.09/2021 the petitioner is getting Rs. 14,000/- p.m for her and her child's maintenance from the O.P/ husband but she is facing difficulty to maintain herself as well as her minor son from the said maintenance amount.

He further submits that the salary of the O.P/ husband has been enhanced substantially from the date of passing of the maintenance order and expenses of education of the minor child has increased substantially but the O.P/husband did not voluntarily increased the maintenance amount and accordingly he prays for pendente lite maintenance of Rs. 20,000/- each for the petitioner/ wife as well as her minor son .

Per contra, Ld lawyer for the O.P/husband, who is petitioner of the Mat Suit, raises vehement objection by submitting that the petitioner / wife impugned Misc. Case is liable to be dismissed as the O.P *husband is complying with the order of the M.R. Case No.09/2021.*

He also submits that O.P/ husband has to maintain himself and his aged parent from his megare salary and the petitioner/wife is earing substantially from her online business and accordingly her prayer is liable to be rejected .

Perused the impugned petition of the petitioner/wife, W/O of the husband/OP as well as declaration and assess of liabilities of both the parties and other materials of the case record.

Considered.

From the pleadings as well as submission of the Ld lawyers it is the undisputed facts of this case that in terms of order passed in M.R. Case No.09/2021 the petitioner/wife is getting monthly maintenance of Rs.14,000/- i.e.Rs.7,000/- for herself and Rs.7,000/- for her minor son aged about 10 years and that the O.P/ husband is in Defence Service.

It reveals from the contents of the declaration of assets and liabilities of the O.P/ husband as well as the present salary as disclosed by his Ld lawyer *that his monthly salary excluding all the contingent allowances with respect to the place of posting around Rs.50,000/-.*

During the course of hearing the Ld. Lawyer for the O.P/ husband very candidly submits that father of the O.P/ husband is a retired police person and he is getting monthly pension from the Government and the O.P/ husband does not have any document regarding his wife's income .

The Hon'ble Supreme Court in the case of **Rajnesh Vs.Neha & another, Crl Appeal No 739/ 2020** has been pleased to observe that maintenance case of a wife under different Act is maintainable

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even though she is getting maintenance from her husband under a particular Act but the Court while considering her petition must take into account the amount of maintenance which she is getting in any of her maintenance case .

It is a fact that when the petitioner/wife is getting maintenance in terms of the maintenance order passed by the Ld. J.M. Mirik in M.R. Case NO 09/2021 then she could have easily preferred an application U/S 127 of the Cr.p.c corresponding to Sec.146 of the BNSS ,2023 for enhancement of the maintenance amount but law does not restrained her from praying for pendente lite maintenance for herself and her minor son in a Divorce Suit U/ Sec. 13 of the H.M. Act 1955.

Reverting back to our discussion on the facts of the suit in hand it is needless to mention once again that there is no allegation against the O.P/ husband for non compliance of the order of M.R. Case NO.09/2021 .

In my considered view, while considering a petition for pendente lite in maintenance U/Sec 24 of the H.M. Act Court has to take into consideration not only the change in income of the O.P/ husband but also to consider the changing market index regarding price of commodities and educational expenses of a minor child.

As the O.P/ husband fails to rebut petitioner/wife's petition case that she has no source of income either by adducing any evidence or by producing by any documents, so the said factor also goes in favour of the petitioner / wife .

Having regard to my above discussion as well as taking into consideration of the fact of existing price index of essential commodities and minimum education cost of a student of Class V or VI in an English Medium School as well as monthly salary of the O.P/ husband, I am of the view that justice demands that at least Rs.20,000/-p.m for the petitioner/wife and her minor son be awarded for their support from this month and Rs. 10,000/- be also awarded as litigation cost. Thus, the petitioner / wife's petition is allowed in part.

Hence, it is ,

ORDERED

that the instant Misc Case U/Sec. 24 of the H.M. Act 1955 is allowed in part on context against the husband/O.P and he is directed to pay maintenance pendente lite of Rs.20,000/- p.m to the petitioner / wife for her as well as her minor son's maintenance from this month and litigation expenses of Rs.10,000/- .

It is made clear that any maintenance paid in terms of order of M.R. Case NO.09/2021 shall be deducted from the maintenance pendente lite of this Misc case and O.P/ husband shall pay the monthly maintenance pendente lite within first seven days of each succeeding month .

Thus , the instant Misc case is finally disposed of on contest .

D/c by me.

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SD/- Additional District Judge,
Kurseong.