

CNR No: WBSP01-010769-2022

Present: Subhra Som Ghosal

J.O Code: WB00984

Misc. Case No: 345 of 2022

Order No. 20, dated: 06-10-2023.

The petitioner/wife as also the opposite party/respondent has been duly represented by filing hazira.

As stipulated by the previous order today is fixed for hearing the petition dated 29.04.2023 praying for vacating the order of ex-parte hearing filed on behalf of the opposite party/respondent.

On call Ld. Advocates for both the parties are found to be present. Hence the case record is taken up for hearing.

Heard Ld. Advocates. Perused the case record.

The ld lawyer for the opposite party/respondent submitted that his client may be given an opportunity to ventilate his stand before this court or else a valid ground may be turned down even without being heard. The prayer was vehemently opposed by the learned lawyer for the petitioner/wife and it was argued that the petitioner will be prejudiced if the prayer is allowed.

When indeed in this case the opposite party/respondent is praying to contest this case in that event keeping in mind the canons of our legal jurisprudence, I am inclined to afford the opposite party/respondent with an opportunity to ventilate his cause before this court and contest the claim of the petitioner/wife. However this court is not unmindful of the fact that the petitioner/wife has to suffer inconvenience due to the delay and she is entitled to get compensated by way of cost to be paid by the opposite party/respondent.

Hence it is ordered;

That the petition as filed by the opposite party/respondent is hereby allowed. The opposite party/respondent is given an opportunity to defend this case but subject to payment of cost of Rs. 1000/ to the petitioner/wife.

On introspection of the case record it has transpired that till date the affidavit of assets and liabilities have not been filed by either of the parties. In this backdrop it is necessary to fumigate my mind with the directions of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the epoch making judgment of **Rajnish vs. Neha & Another, (2021) 2 SCC 324** has formulated the procedure to be followed in case of this nature. The direction of the Hon'ble Supreme Court runs in the following lines:

"132. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrates Court, as the case may be, throughout the country." [Emphasis supplied]

From the above direction it is axiomatic that requirement of filing assets and liabilities is not only required in suits/case filed after the direction of the Hon'ble Supreme Court, but it is equally applicable to all pending proceedings. Hence this court is obliged to follow the direction of the Hon'ble Supreme Court and accordingly direct the parties to comply with the direction of the Hon'ble Supreme Court.

Ld. Advocates for both the parties verbally prayed for time for filing their respective affidavits. On such prayer, let the case be adjourned.

To 01.02.2024 for filing affidavit of assets and liabilities by the parties following the direction of the Hon'ble Supreme Court in **Rajnish vs. Neha & Another, (2021) 2 SCC 324** and hearing of the Misc Case.

Typed to the dictation directly;

corrected on the system.

Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

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