

Mat Suit 3318 of 2019

31

30.09.2023

This is an application u/s 36 of Special Marriage Act..

The petitioner being respondent of this suit has contested the suit by filing written statement and by filing application for alimony pendente lite is stated that she is staying in the shelter of her father along with her other members of family. She is in the mercy of her family and is great hardship due to paucity of accommodation. For such reason she is in urgent need of accommodation so that she can stay independently for her survival.

It is also stated that though she is a working lady but she is not in a position to meet her day to day expenses and maintenance out of her own income. She is also not in a position to take accommodation in a rental basis without any financial support. According to the petitioner, her husband earns Rs. 1,10,000/- per month and he has no dependent and is residing in Official Quarter. Therefore, the petitioner prays for alimony pendente lite @ Rs. 30,000/- per month and litigation cost of Rs. 4,00,000/-.

The petitioner husband files written objection against the application u/s 36 of Special Marriage Act and stated that the petition is not maintainable and she is not entitled to get relief as prayed for.

It is also stated that the respondent is a highly educated and has completed her B.sc (Zoology) and is working as an Audit Officer, Co-Operation Department, Government of West Bengal since, 2012 and at present she holds the post of Senior Auditor (Grade-II) drawing a salary of Rs. 44,160/- as on June, 2021. The father of the respondent is a renowned Medical Practitioner and brother is an Engineer. On the other hand, the father of the petitioner passed away on 09.07.2014 and has been brought up in an extreme hardship by her mother and the OP has completed his M.Sc Degree and got the service in State Bank of India in the year, 2008. At present he is a Manager and is residing in an Office accommodation and he has to look after and care of his mother.

It is further stated that the respondent initiated proceeding u/s 12 of PWDV Act and had prayed for interim relief u/s 23(2) of the said Act but the same was rejected by the Ld. Judicial Magistrate, 2nd Court, Barasat. In the said Court respondent had filed an affidavit of assets and liabilities wherein she has stated that she is staying at paternal house at D.C 9/11, Sastri Bagan, Payel Apartment Flat No. 7, Baguihati, Kolkata-59 and has also stated that she is getting benefit of house rent. In her affidavit she has stated that her monthly expenses as ₹ 15,000/- as such it is shown that her monthly expenditure has been reduced to 15,000/- from ₹ 30,000/-. The respondent has sufficient income to maintain herself as such she is not entitled to get any amount. Denying other allegations petitioner husband prays for dismissal of the application.

Petitioner husband filed affidavit of assets and liabilities. The respondent wife submits that she will not file any separate assets and liabilities as she has already filed the same before the Ld. Judicial Magistrate at Barasat and the copy of the said assets and liabilities annexed with the petition.

The Respondent wife by filing affidavit states that her educational qualification is B.Sc (Hons) and resides at D.C 9/11, Sastri Bagan, Payel

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Mat Suit 3318 of 2019

Apartment Flat No. 7, Baguihati, Kolkata-59. As per her statement date of marriage is 06.02.2016 and date of separation is 09.05.2016. Her monthly expenses is ₹ 15,000/-. She is Senior Auditor (Grade-II) by profession. Her income from her salary is ₹ 44,160/- as on June, 2021. She draws house rent allowance and maintains three bank accounts.

It is also stated that her husband is Officer of State Bank of India having income of ₹ 80,000/- approx. and resides in Official accommodation.

OP has also filed affidavit stating his age as 39 years and educational qualification as M.Sc in Mathematics, professional qualification CAIIB. According to the OP date of marriage is 06.02.2016 as admitted by the respondent but according to him, the date of separation is 09.05.2016. He is service holder and his monthly income is ₹ 99,122/-. He has also shown monthly expenditure as ₹ 70,000/-. He is a income tax assessee. He stays in his official accommodation. He has shown three cases pending between the parties. According to him, expenses incurred in this litigation is ₹ 1,33,300/-. Regarding the income, assets and expenditure of the spouse he has stated that his wife is a service holder and get salary of ₹ 49,560/- as on March, 2023. She is working under the State Government as Senior Auditor (Grade-II).

Petitioner husband has annexed the document i.e. salary slip of the respondent wife obtained by way of RTI, copy of order in case No. C-1965 of 2019I and pay slip for the month of August, 2023 of the petitioner.

On perusal of the statements of both the parties and hearing upon both sides, I find that admittedly the parties are husband and wife and their marriage was solemnized in the year, 2016 and they lived together for three months three days. According to the parties, they were separated from each other on 09.05.2016.

It is evident that they are not residing together since long. It is also seen that the instant suit for dissolution of marriage has been filed by the petitioner husband himself. According to the respondent wife she was tortured and was compelled to live her matrimonial home and at present she has no hearth & home and is urgently required as separation accommodation. Ld. Advocate for the respondent wife submits that her salary is ₹ 44,000/- per month and her husband is a Manage of State Bank of India having salary rupees more than 1,30,000/-. It is also submitted that the case under PWDV Act and Criminal Proceeding u/s 498A of IPC are pending before Barasat Court. The respondent wife has no sufficient means to maintain herself as such claims for ₹ 30,000/- per month as maintenance pendente lite and ₹ 4,00,000/- as litigation cost.

Ld. Advocate for the petitioner husband submits that their marital life was only for three months and three days. Th wife has filed a case u/s 498A of IPC and also a proceeding under PWDV Act but the prayer for interim relief has been rejected. The petitioner has been implicated falsely by the respondent in many litigation. Net income of the petitioner is ₹ 99,122/- and the net income of the respondent wife is ₹ 37,320/-. According to the wife in the affidavit of assets and liabilities her monthly need/ expenses is ₹ 15,000/- so she does not require any further monetary relief. It is further submitted that the respondent wife did not supply any income proof and has suppressed the best evidence. The petitioner has

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Mat Suit 3318 of 2019

the responsibility of his old mother and other expenses so he is not in a position to pay any maintenance to the petitioner.

At this stage, the case in hand of both the parties is affidavit versus affidavit. The parties will get their opportunities to prove and disprove the allegations in the original application after adducing evidence but in the instant case, it is seen that this is an application for alimony pendente lite which the Court can order interim orders during the pendency of the proceeding for dissolution of marriage between the parties and in such case, such order can be made for payment of expenses of the proceeding by the husband to the wife and alimony by monthly payment where the wife has no independent income sufficient for her support. The wife has not filed any present status affidavit of assets and liabilities in the instant case and preferred to rely upon the one filed before the Criminal Court. In the circumstances, the wife has filed photocopy of the said affidavit of assets and liabilities.

In the instant case, the claim of the wife is that the income available to her is not sufficient to maintain herself. The contention of the husband is that her monthly expenditure is much less than her income and as such she has sufficient income to maintain herself.

In the instant case, the question arose is whether the wife claiming maintenance is unable to maintain herself and her income is not sufficient for herself. In this respect, in the case of *Veena Devi -Versus- Ashok Kumar*, **200 Cr.LJ,2332 (Pat)** the Hon'ble Court has held that inability of the wife petitioner to maintain herself is to be assessed on the date of the order to be passed on the date of application for maintenance.

The **expression** "unable to maintain herself" puts the emphasis on the wife being unable to maintain herself and the emphasis is not on the capacity of wife to earn for herself. As such the potential of the wife is not in contemplation in the above expression. Though the wife is highly educated person in a given case and she does not chose to go for work but wants to sacrifice for entire life for the wellbeing of the family even at the cost of lucrative job, it cannot be said that in such a case, wife will not be entitled to maintenance if her husband neglects or refuse to maintain her.

The wife cannot be refused maintenance on the ground that she was earning by doing household work. What is necessary is that she herself should be in a position to maintain herself, not much below the status which she was used to at her husband's place. (*Abdul Salim -Versus- Nazima Begum*, 1980 Cr.LJ, 232) as standard living of the parties must also be taken into consideration. In the instant case, it is seen that the status of the husband is a Manage of State Bank of India and the position of the wife is also a Senior Auditor Officer (Grade-II). At present, admittedly the wife is residing at her parental house though she draws her house rent allowance. She intends to reside in separate house. The house rent available to this respondent wife cannot be said to be insufficient to take an alternative accommodation for her residence.

Following the fact and the circumstances as well as considering the status of both the parties and material available on record, I find that the income available to the respondent wife is sufficient to maintain herself as per her

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Mat Suit 3318 of 2019

affidavit sworn before the Ld. Judicial Magistrate in case no. C-1965 of 2019. It is also seen that she has not disclosed her details of expenditure. Considering the general monthly expenditure of the wife / respondent (rent, household expenses, medical bills, transportation etc.) as ₹ 15,000/- and her monthly income is ₹ 44,160/- as on June, 2021 as well as considering her present net income as ₹ 37,320/- after deducting all deductions, I do not find that she is also required further maintenance allowance from the petitioner husband with whom she has spent three months three days.

Therefore, I am of the view that she is not entitled to get any maintenance pendente lite or litigation cost.

Hence, it is,

ORDERED

that the petition u/s 36 of Special Marriage Act, 1954 filed by the wife is hereby **rejected** on contest without cost.

Instant application is thus disposed of .

To **28.11.2023** for P.H.

Dictated & Corrected by me

A.D.J, 3rd Court, Alipore.
(WB00757)

A.D.J. 3rd Court, Alipore.

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Mat Suit 3318 of 2019

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