

13th January,
2025
(AK)
21

F.A.T 178 of 2024
IA No: CAN 2 of 2024

Sudip Datta @ Sudip Kumar Datta
Vs.
Mitali Datta

Mr. Ashok Banerjee, Snr. Adv.
Mr. Subhabrata Dutta
Mr. Manoj Ghosh
Mr. Aranya Saha
Ms. Monami Mukherjee
...for the appellant.

Mr. Billwadal Bhattacharyya, Snr. Adv.
Mr. Anish Kumar Mukherjee
Mr. Tamaghna Pramanick
...for the respondent.

1. The present application bearing CAN 2 of 2024 has been filed by the respondent/wife in the appeal claiming alimony to the tune of Rs.1 lakh per month.
2. Learned senior counsel appearing for the respondent/wife contends that in a Civil Revisional Application which is still pending in this Court at the behest of the appellant/husband, the husband annexed personal information on the basis of affidavit-of-assets filed in the trial court wherefrom

the husband is seen to have admitted his monthly income to be Rs.11,85,730/-.

3. The income tax paid, as disclosed therein, is Rs.11,63,969/- and the annual net income has been shown by the husband to be Rs.1,40,08,824/.
4. The said statements have been reiterated throughout the said affidavit and in the final analysis, the total monthly income has been shown by the husband in such affidavit to be Rs.11,85,730/-, in consonance with the personal information disclosed at serial no.45.
5. Thus, the monthly income now pleaded by the husband, which is to the tune Rs. 3 lakh per month with variable monthly bonus of Rs.2,73,000/-, is a gross suppression of the actual income of the husband.
6. It is next contended by learned senior counsel for the respondent/wife that in the self-same affidavit of the husband in the trial court, annexed to his revisional application which is still pending, both sons of the parties, who have been residing with the appellant/husband, are shown to be non-dependants of the husband.
7. In fact both said sons (twins), having attained majority since long, cannot be termed as dependants of the husband anymore.

8. Learned senior counsel next argues that the propositions laid down by the Supreme Court in *Rajnesh vs. Neha and another*, reported at (2021) 2 SCC 324, have not been adhered to in the present case inasmuch as the appellant/husband, in his affidavit-of-asset, has failed to disclose his income tax returns for the relevant period.
9. Moreover, bank statements have been disclosed only for three months instead of the three years as required under the said judgment of the Supreme Court.
10. That apart, it is argued that the respondent/wife has substantiated her requirements from the averments made in her application and her other pleadings and, having no independent income of her own, is entitled to alimony of at least Rs.1 lakh per month as claimed.
11. Learned senior counsel appearing for the appellant/husband, while opposing the application, points out that the monthly salary of the husband, as disclosed in the affidavit-of-asset filed in the present appeal, is Rs.3 lakh with monthly bonus of Rs.2,73,000/- which is an *ad hoc* payment based on projected business of the company where the appellant/husband works.

12. Thus, such monthly bonus is a fluctuating figure and cannot be a reasonable basis of ascertaining the monthly income of the husband.
13. Learned senior counsel next contends that the appellant/husband has several loan liabilities, including an HDFC Bank loan, which is a house loan, to the tune of Rs.82,62,784/- and a car loan with the ICICI Bank to the tune of Rs.1,85,544/-.
14. That apart, the student loans of the two sons of the appellant also have to be serviced by the appellant, which are respectively to the tune of Rs.14,14,808/- and Rs.20,17,835/-.
15. Learned senior counsel appearing for the husband also contends that the petitioner, as a partner of Ernst & Young LLP, has substantial expenses to be incurred.
16. Also, the husband has to pay Rs.2 lakh per month as EMI.
17. Next focusing on the averments of the respondent/wife/petitioner, learned senior counsel for the husband argues that the wife admittedly drew a monthly amount to the tune of Rs.10,909/- from January 21, 2024 to November 2, 2024.
18. Moreover, the total medical expenses for the wife for the year 2024 has been disclosed to be Rs.65,686/- approximately. However, despite the same, she has

stated that her monthly medical expenses is Rs.55,000/- which is, thus, not credible.

19. It is argued that if the average withdrawal per month of the wife is Rs.10,909/- for a period of eleven months between January and November, 2024, it is not understandable as to how and for what expenses she requires the huge amount of alimony to the tune of Rs.1 lakh per month.
20. Upon careful consideration of the materials on record, we find that the appellant/husband himself has admitted in his affidavit-of-assets filed before the trial court, which is a part of the annexures of the pending revisional application filed by the husband before this court, that his monthly income is Rs.11,85,730/-.
21. Till date, there is no modification to the same.
22. The husband admittedly is a Cost and Management Accountant working in a reputed firm as disclosed by himself.
23. Hence, it is not understandable as to how, with the lapse of time, the monthly income of the husband got reduced from Rs.11,85,730 to Rs.3 lakh along with monthly bonus of Rs.2,73,000/- per month.
24. Moreover, the husband, although arguing that a major part of the monthly income comes from monthly bonus, which is a fluctuating amount, has utterly failed to disclose the monthly bonus earned

by the appellant/husband at least over the last few years for the court to come to a conclusion as to the average monthly bonus actually earned by the husband.

25. The remuneration of a professional of the stature and qualification of the appellant/husband, in the present case, a Cost and Management Accountant, cannot decrease with time unless there is some specific and categorically disclosed reason for the same. Here, no such explanation has been given by the husband.
26. Thus, the plea now taken by the husband to the effect that his monthly salary is only Rs.3 lakh plus monthly bonus Rs.2,73,000/-, as opposed to Rs.11,85,730/-, as disclosed in his affidavit in the trial court, is not credible and is hereby disbelieved.
27. Insofar as the alimony is concerned, it is a settled rule of thumb that the monthly alimony granted to the wife is between one fifth and one third of the net income of the husband.
28. In the present case, if we go by the monthly income disclosed by the husband himself, the amount claimed by the wife is even less than one fifth of such salary.
29. The question is not what are the actual daily requirements of the wife but as to what is the perceived requirement of the wife, taking into

account not only her daily bread but her other necessities commensurate with the status of both spouses.

30. Even if the status of the husband and his professional qualification is taken into consideration, monthly alimony of Rs.1 lakh is a meagre nothing.
31. Moreover, there is no logic behind the argument that since the wife at present draws an amount of Rs.10,909/- per month, at least between January and November, 2024, her requirements are restricted to such amount.
32. In view of meagre financial means, a person may very well be constrained to limited drawings from her limited resources.
33. However, that does not necessarily mean that her necessities, in particular commensurate with her husband, are required to be restricted to that amount.
34. Hence, upon a perusal of the materials-on-record and taking into account the contentions of the parties, we are of the opinion that the husband has an income of Rs.11,85,730/- per month.
35. Even if it is taken that his monthly income, including salary and bonus, comes to the tune of Rs.5,73,000/-, the alimony of Rs.1 lakh per month,

as claimed by the wife in her application, is less than one fifth of the same.

36. As to the payments made for the student loans of the sons of the husband, since both the sons have attained majority long back, it is their incumbent duty to repay their student loans, as is the purpose and premise of the principle behind student loans.
37. Hence, the husband cannot take shelter under the student loans payable by his major sons to deprive the wife of her legitimate alimony.
38. In such view of the matter, CAN 2 of 2024 is disposed of on contest without costs, thereby directing the appellant/opposite party/husband to pay alimony to the tune of Rs.1 lakh per month to the respondent/petitioner/wife, payable within the tenth of each month.
39. The first of such payments shall commence from the month of February 2025, which will be payable by February 10, 2025, and thereafter by the tenth of each of the succeeding months.
40. The arrear alimony for the months of September, 2024 till January, 2025 shall be paid by two equal monthly instalments, the first of which shall be paid by January 31, 2025 and the next by February 28, 2025.
41. Since it is submitted by learned counsel for the parties that the appeal is otherwise ready for

hearing, let the same be listed in the monthly list of February, 2025.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)