

In The High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. 4242 of 2025
IA NO: CAN/1/2026

Dipankar Sarkar
vs.
Payel Nath (Sarkar)

For the Petitioner : Mr. Satyam Mukherjee, Advocate
Mr. Kingshuk Dasgupta, Advocate
Ms. Debomita Biswas, Advocate

For the
Opposite Party : Mr. Narayan Ch. Mandal, Advocate
Mr. Bhaskar Mandal, Advocate

Heard on : 11.09.2026

Judgment on : 11.09.2026

Uploaded on : 14.09.2026

MD. SHABBAR RASHIDI, J.:-

1. The instant revisional application has been filed by the petitioner/husband assailing Order No.9 dated November 19, 2025, passed by the Learned Additional District & Sessions Judge, 3rd Court, Basirhat in Mat Suit No.19 of 2025.
2. By the impugned order, the petition filed on behalf of the petitioner/husband dated September 2, 2025 praying for issuance of

witness summon upon the head of the institution i.e. 'Sishutirtha Academy' and for keeping the hearing of the petition for *alimony pendente lite* in abeyance till recording of evidence of the head of the institution i.e. 'Sishutirtha Academy', was dismissed.

3. It is submitted by the learned advocate for the petitioner/husband that in a suit for divorce against the opposite party/wife, an application for *alimony pendente lite* was taken out by the opposite party/wife. At the time of hearing of such application, the petitioner/husband by two petitions dated September 2, 2025 prayed for issuance of witness summon upon the head of the institution, 'Sishutirtha Academy' where, according to petitioner/husband, the opposite party/wife has been working for gain.
4. It has been submitted by the learned advocate for the petitioner/husband that the learned Trial Court did not consider the established principles of law at the time of passing the impugned order rejecting the prayer of the petitioner/husband.
5. Learned advocate for the petitioner/husband refers to the petition of the divorce filed in Mat Suit No.19 of 2025. It is his submission that, in such petition, the address of the opposite party has been shown as working in 'Sishutirtha Academy', Baduria Road, Post Office-Kholapota, Police Station – Matia, with the District – North 24 Parganas. Such address of the opposite party/wife was in addition to

the residential address of the opposite party. Learned advocate for the petitioner submits that the summons in Matrimonial Suit No.19 of 2025 was served upon the opposite party on both the addresses. He relies upon the service report in respect of the summons in the Matrimonial Suit.

6. Learned advocate for the petitioner submits that the opposite party/wife has been suppressing the fact that she was a working lady and has been earning by working in such institution. In the affidavit-of-assets filed on behalf of the opposite party/wife, the opposite party has manoeuvrably not disclosed the bank statement. Learned advocate for the petitioner/husband submits that the impugned order is liable to be set aside.
7. On the other hand, learned advocate appearing for the opposite party/wife submits that the petitioner never worked in 'Sishutirtha Academy'. She used to go to such institution 3/ 4 days in a month for recreation.
8. Learned advocate for the opposite party/wife further submits that the learned Trial Court was quite justified in rejecting the prayer of the petitioner for issuing of the witness summons upon the head of 'Sishutirtha Academy'. He stands by the impugned order.
9. As it transpires, the petitioner instituted Matrimonial Suit No.19 of 2025 as against the opposite party/wife seeking divorce in terms of

Sections 27(1)(b) and (d) of the Special Marriage Act, 1954. Upon appearance in the Matrimonial Suit, the opposite party/wife filed an application under Section 36 of the Special Marriage Act, seeking *alimony pendente lite*. Such petition was being heard by the learned Trial Court.

10. In course of hearing of such application, the parties were directed to submit their affidavit of assets which both the parties had filed.
11. By filing an objection to such petition under Section 36 of the Special Marriage Act, the present petitioner/husband made out a case that the opposite party was very much working for gain and earning from working in 'Sishutirtha Academy' which was sufficient for her livelihood. He submitted therein that the opposite party/wife was not entitled for any *alimony pendente lite*. Incidentally, the Matrimonial Suit was filed by the present petitioner/husband upon an allegation that the opposite party left her matrimonial house on her own accord.
12. In the affidavit of assets filed on behalf of the opposite party/wife, the opposite party/wife was required to furnish copies of bank statement of all her accounts for the last three years. In her affidavit of assets, the opposite party disclosed that she had one bank account in SBI Bank, Basirhat Branch but due to machinery problem, the opposite party/wife could not update the bank passbook. This statement according to learned advocate for the petitioner, was suppression of the

income of the opposite party/wife which included her income from working in the 'Sishutirtha Academy'.

13. In course of hearing of the petition under Section 36 of the Special Marriage Act, the present petitioner/husband approached the learned Trial Court for issuance of witness summons to produce certain documents upon the head of the institution of 'Sishutirtha Academy' in order to ascertain whether the opposite party/wife was working with them and/or earning any income from such work. Such application filed by the petitioner was refused by learned Trial Court by the impugned order.
14. On perusal of the impugned order, it transpires that learned Trial Court refused to accept the contention of the petitioner on the ground that the address of the opposite party working in 'Sishutirtha Academy' was not mentioned in the application under Section 36 of the Special Marriage Act. It was also held by the learned Trial Court that the petitioner/husband did not file any document or copy of document of any other case pending between the parties on the basis of which it could be said that the opposite party/wife is involved or engaged in the said institution in any manner. The learned Trial Court also observed that the petitioner/husband had mentioned the address of the opposite party/wife working in 'Sishutirtha Academy' of his own without any supporting record or document. He has also noted in the impugned

order that the summon required to be served upon the opposite party/wife on the address of 'Sishutirtha Academy'. The process server gave a report to the effect that he was informed by the head of the institution that opposite party/wife was not attending the said institution for last few days.

15. Learned Trial Court also held that in the facts and circumstances of the present case, there was no need to call for the Attendance Register etc. from the said institution i.e. 'Sishutirtha Academy'.
16. Therefore, from the materials on record, it transpires that petition filed on behalf of the present petitioner seeking production of certain document from the institution i.e. 'Sishutirtha Academy' where, opposite party used to work was refused by the learned Trial Court. It was held by learned Trial Court that the matter with regard to *alimony pendente lite* was to be decided on the basis of affidavit and no evidence was required to be produced.
17. It is true that an application under Section 36 of the Special Marriage Act is required to be considered and decided in a summary manner on the basis of affidavit evidence but, at the same time, it is to be borne in mind that such affidavit evidence filed on behalf of the parties must disclose the true facts. As I have noted hereinabove that by filing the affidavit of assets, the opposite party/wife has refrained from disclosing her income and the source thereof on the plea of machinery problem

resulting in non-updation of passbook. If that be so, the petitioner/husband cannot be debarred from bringing forth the documents which would unearth the truth.

18. However, in the instant case the parties were directed to submit their affidavits of assets in the proceeding. The parties submitted such affidavits, but the opposite party/wife withheld valuable information with regard to her bank account on the ground of machinery problem. As per the case of the parties as made out in their respective affidavits, the petitioner/husband made out a case that the opposite party/wife was earning by working in 'Sishutirtha Academy' and for such reason she was not entitled for *alimony pendente lite*.

19. On the contrary, it was the case of the opposite party/wife that she had no income of her own. She was a destitute lady and she was very much dependent on alimony to be provided by the present petitioner. There were contentious claims between the petitioner/husband and opposite party/wife which could have been decided on the basis of documents sought to be produced at the behest of the petitioner/husband.

20. In such view of the facts, the learned Trial Court was not justified in refusing the prayer of the petitioner for calling for the head of the institution to produce relevant documents with regard to the

employment of the opposite party/wife, if any, in the institution i.e. 'Sishutirtha Academy'.

21. In such circumstances, the impugned order is hereby set aside.
22. Learned Trial Court shall issue witness summon upon the head of the institution i.e. 'Sishutirtha Academy' for production of the documents as mentioned in the petition dated September 2, 2025. Learned Trial Court shall proceed to decide upon the application under Section 36 of the Special Marriage Act filed on behalf of the opposite party/wife in accordance with law.
23. With the aforesaid directions/observations, **C.O. 4242 of 2025** along with connected application stands **disposed of**.
24. Interim order, if any, stands vacated.
25. Urgent Photostat certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Md. Shabbar Rashidi, J.)

CHC