

HIGH COURT OF CALCUTTA**Bench : Hon'ble Justice Biswaroop Chowdhury****Date of Decision: May 03, 2024**

Civil Revisional Jurisdiction Appellate Side

C.O. No. 111 of 2022 and C.O. No. 1071 of 2022

Partha Sakha Maity ...PETITIONER**VERSUS****Bijali Maity****Bijali Maity Paria ...RESPONDENT****Legislation:**

Hindu Marriage Act, 1955 – Sections 24 and 25

Protection of Women from Domestic Violence Act

Section 125 of the Code of Criminal Procedure (CrPC)

Subject: Revisional applications arising from matrimonial disputes involving claims for litigation costs and maintenance under various statutory provisions.**Headnotes:**

Litigation Costs and Maintenance Pendente Lite - High Court reviews orders concerning payment of litigation costs and adjustments of maintenance payments - Considers legal provisions under Section 24 of the Hindu Marriage Act, 1955, and precedents set by the Supreme Court for determining maintenance and litigation expenses - Litigation costs should be prioritized and awarded from the outset of proceedings, especially when the wife is the respondent in a matrimonial suit - Maintenance includes necessities for a

decent living but excludes litigation costs, thus separate consideration is required for both .

Adjustment of Awards - Trial court's method of adjusting maintenance payments against litigation costs deemed inappropriate - Litigation costs are awarded to enable a litigant to pursue or defend a suit without undue hardship and should not be offset by maintenance awards, which are meant for basic living expenses .

Proceedings in Matrimonial Suits - Emphasized that matrimonial disputes should be viewed with a consideration of human aspects beyond legal technicalities - In cases where litigation costs ordered are not paid, proceedings should not continue, ensuring compliance with court orders is essential for the continuation of the suit.

Decision and Modification of Lower Court Orders – Adjustments made to litigation costs awarded from Rs. 3,000 per month to Rs. 2,000 per month effective from the date of appellate order – Appellate decision mandates compliance with payment of adjusted litigation costs for continuance of matrimonial proceedings in the Lower Court .

Decision : The court modified the litigation costs awarded to the respondent, directing the petitioner to pay Rs. 2,000 per month instead of Rs. 3,000, citing the need for reasonable and just enforcement tailored to the case specifics

Referred Cases:

- Rajnesh VS Neha and Anr., reported in 2021(4) ICC 757 (S.C.)
- Anita Karmakar and Anr. VS Birendra Chandra Karmakar, reported in AIR 1962 CAL-88
- Aditi Alias Mithi VS Jitesh Sharma, in Criminal Appeal No. 3446 of 2023, arising out of S.L.P.(cl) No. 11954 of 2023

Representing Advocates:

For Petitioner: Mr. S.P. Dalapati, Mr. Sourav Mondal, Mr. Asumdipta Santra, Mr. Soumava Santra, Mr. Amarnath Sen, Mr. Malay Dhar, Mr. Shouvik Naskar, Mr. Amit Bikram Mahata

For Respondent: Ms. Subhangi Panigrahi

– The proceeding of the matrimonial suit was contingent upon timely payment of these costs – Emphasized the practical application of maintenance laws and protection of litigants’ rights within matrimonial disputes [Final paras].

These revisional applications arising from Order no-62 dated 11.03.2022 passed in Matrimonial Suit No – 22 of 2018 pending before Learned Additional District Judge 2nd Court Contai and Order no – 58 dated 9/11/2021 passed in J. Misc case no-11 of 2018 by the said Learned Judge was taken up for analogous hearing for its inter-connectiveness.

The petitioner in C.O. 111 of 2022 Shri Partha Sakha Maity is the opposite party in J. Misc Case No-11 of 2018 before Learned Additional District Judge 2nd Court Contai and is aggrieved by the Order No-58 dated 9-11-2021, passed by the said Learned Judge in the said case, and the petitioner of CO. 1071 of 2022 Smt Bijali Maity is the respondent/wife in Matrimonial Suit No 22/2018 pending before Learned Additional District Judge 2nd Court Contai and is aggrieved by the Order No-62 dated 11.03.2022 passed by the said Learned Judge in the said suit. The petitioner of CO. No. 111 of 2022 is the opposite party in C.O. 1071 of 2022 and opposite party in C.O. No-111 of 2022 is the petitioner in C.O. 1071 of 2022.

Before proceeding to deal with the merits of each application it would be proper to quote the Orders passed by the Learned Judge in the said two cases.

In J.Misc Case No-11 of 2018 the Learned Judge by Order No-58 dated 09.11.2021 was pleased to observe and direct as follows:

‘Under such circumstances, wherein there is nothing to ascertain the income of the opposite party in specific terms, I feel that an amount of Rs. 9,000/- as litigation cost would be appropriate and since the petitioner wife is already awarded Rs 6,000/- in two separate Provisions (as maintenance under Section 125 CrPC and as maintenance under Section 23 of the PWDV Act to the tune of Rs. 3,000/- each) the amount shall be adjusted with the said amount such that the petitioner shall only be entitled to receive as additional amount of Rs. 3,000/- Regarding Permanent alimony the same can be granted only at the time of passing the decree or subsequent to it according to Section 25 of the Hindu Marriage Act No prayer for alimony pendente lite

has been made by the petitioner wife, therefore no order is passed in that regard.

It is hence ORDERED.

That the opposite party is directed to pay the litigation cost of Rs. 9,000/- Per month to be adjusted with the awarded Rs. 6,000/- as maintenance in the two separate litigations under two separate provisions (Misc Case 204 of 2014 and Misc Case 7 of 2015) such that opposite party shall pay the excess amount of Rs. 3,000/- (Rupees three thousand) only per month as litigation cost by the 10th of each succeeding month.

The J.Misc Case is thus disposed of accordingly on contest.' The learned Judge in Mat Suit 22/2018, by Order No-62 dated 11.03.2022 was pleased to observe and direct as follows:

'Today is fixed for further evidence and payment. The Petitioner files hazira. One witness from the side of the petitioner named Siddhartha Sakha Maity is present before the Court. His vaccination certificate has been filed. The respondent filed hazira and also a petition whereby she has prayed for staying the proceedings of the Mat Suit until payment of litigation cost as ordered by this Court in J. Misc Case 11/2018.

'The Ld. Counsel on either side is present. The Ld. Counsel on behalf of the petitioner submitted that the petitioner has already preferred a challenge of the order of the J. Misc Case before the Hon'ble High Court and the case has not yet been disposed of by the Hon'ble Court, so it is prayed that an adjournment for payment may be made.

Heard both sides. The petitioner has exercised his right in approaching the Hon'ble High Court but there is no stay of the order challenged against. So the payment can be made by the petitioner without any hitch but since the matter is pending before the Hon'ble Court, the petitioner is given time till the next date to make the payment. This allowance of time shall however not operate as stay, specially under Section 10 of the C.P. Code, of the proceedings of this, Mat suit. The provision of Section 10 shall not be applicable herein in any manner and there is no impediment in proceeding with this suit without delay. Hence the Petition filed by the respondent is considered and rejected.

The record is taken up for further evidence. The witness Siddhartha Sakha Maity is examined in chief as P.W.2. on the strength of the affidavit filed by

him under Order 18 Rule 4 of the C.P. Code, cross-examined in part and deferred on the prayer of the respondent.

To 27.04.2022 for further cross-examination of the PW-2.' Heard Learned Advocates for both the parties perused the petitions filed and materials on record.

Learned Advocate for Partha Sakha Maity petitioner in C.O. 111 of 2022 and opposite party in C.O. 1071/2022 submits that the Learned Court below erred in recording that the opposite party/husband claimed to be a Government service holder as temporary in nature which is contrary to record and secondly in directing to pay Rs. 9,000/- per month as litigation cost which is beyond the claim of the opposite party in the application under Section 24 and 25 of the Hindu Marriage Act. Learned Advocate further submits that point for consideration before this Court is whether the impugned order dated 09.11.2021 directing to pay litigation cost at the rate of Rs. 9,000/- per month is sustainable in the eye of Law. It is submitted by Learned Advocate that as per ratio of the decision in the case of Rajnesh VS Neha and Anr. all applications for maintenance either interim or final are to be disposed of after considering the affidavit of assets filed by both the parties but in the instant case Learned Trial Court did not follow the ratio of the said decision. Learned Advocate also submits that even on merit the direction to pay litigation cost at the rate of Rs 9,000/- per month is beyond the scope of the application in which the opposite party prayed for Rs 15,000/- as total litigation cost and the petitioner had paid total Rs 27,000/- as per the schedule of payment complying the interim order dated 28.04.2022 passed by this Court in the instant application. Learned Advocate for the opposite party Bijali Maity objects to the submission and prayer made by the Learned Advocate for the petitioner Partha Sakha Maity. The following decisions are relied by Learned Advocate of Partha Sakha Maity.

ADITI ALIAS MITHI.

VS

JITESH SHARMA.

In Criminal Appeal

No. 3446 of 2023

Arising out of S.L.P.(cl).

No. 11954 of 2023.

Rajesh VS Neha and Anr.

Reported in 2021(4) ICC. 757(S.C.)

Learned Advocate for Bijali Maity petitioner in CO. 1071 of 2022 and opposite party in 111 of 2022 submits that the application under Section 24 of the Hindu Marriage Act is required to be adjudicated upon forthwith as soon as it is filed keeping aside the matter for adjudication and for that purpose, if any application for stay of the proceedings is filed the Court cannot refuse to stay the main proceedings.

Learned Advocate relies upon the following Judicial Decision.

Anita Karmakar and Anr.

VS

Birendra Chandra Karmakar.

Reported in AIR. 1962 CAL-88.

This Hon'ble Court in the case of Anita Karmakar and Anr (supra) observed as follows:

“29) In Raydem on Divorce (7th Edition) at Page-512 the following passage appears:-

if a husband who has been ordered to pay alimony pending suit or costs to his wife neglects to do so, she may apply to have the petition dismissed or to have the suit stayed.’

30) In Kemp-Welch V Kemp-Welch (5) (LR. 1910 P. 233) Cozens-Hardy M.R. held that there was jurisdiction in the court to stay all further proceedings by the husband until the whole of wife's taxed costs had been paid or secured and security given for the wife's further costs of the retrial. His Lordship held

that such an order was in strict accordance with the old practice of the Ecclesiastical Courts and his Lordship followed with approval an earlier decision on the point in Joseph V. Joseph (6) (1897) 76L.T.236)

37. The only question that now remains for my consideration is whether in the facts and circumstances of the instant case further proceedings, in the suit for restitution of conjugal rights should have been stayed. I have hereinbefore set out the reasons why the Court below did not stay. None of those reasons appeal to me – particularly the reason that wife petitioner was absent before the Court below. There was no dispute that the husband opposite party had been ordered to pay was not paid. There was no necessity of any evidence orally being given by the wife petitioner for the purposes of the application for stay. Why then the court below made the absence of the wife petitioner a point against her passes my comprehension.

38. In the facts and circumstances of this case I am of the opinion that the suit for restitution of conjugal rights should have been stayed until the husband paid the sums of money that he had been ordered to pay.”

Learned Advocate submits that fact remains that the husband neglected to pay the Maintenance awarded both in Domestic violence case and U/S-125 CrPC which is still outstanding a total sum of Rs. 2,65,000/-the husband/petitioner further neglected to pay litigations costs amounting to Rs.9,000/-.

Learned Advocate also submits that in the above facts and circumstances, the main suit being MAT No. 22 of 2018 should be stayed till the payment of the litigation costs as ordered by the Court below.

Before addressing the issues in both the matters it is necessary to consider the provision contained in Section 24 of the Hindu Marriage Act 1955, and the decision of the Hon’ble Apex Court in the matter of Aditi Alias Mithi (supra).

Section 24 of the Hindu Marriage Act 1955 provides as follows:

S.24. Maintenance Pendentilite and expenses of proceedings.- Where in any proceedings under this Act it appears to the Court that either the wife or the husband as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceedings, it may on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding

such sum, as having regard to the petitioner's own income and the income of the respondent it may seem to the Court to be reasonable:

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

The Hon'ble Supreme Court in the case of Aditi Alias Mithi was pleased to observe as follows:

8. "The manner in which maintenance payable under Section 24 of the Hindu Marriage Act, 1955 or Section 125 Cr.P.C. is to be assessed, was considered by this Court in its celebrated judgment in Rajnesh V. Neha and Another, (2021) 2 SCC 324. Detailed guidelines were issued. It was noticed that the terms of maintenance are decided on the basis of pleadings of parties and on the basis of some amount of guess work. It is often seen that both the parties submit scanty material and do not disclose correct details. The tendency of the wife is to exaggerate her needs, whereas the husband tends to conceal his actual income. Keeping that in view, this Court laid down the procedure to streamline grant of maintenance. The judgments of various courts were referred to and response from various State Legal Services Authorities was sought. This Court even requested the National Legal Services Authority to submit a report on the suggestions received from the State Legal Services Authorities for framing guidelines on the affidavit of disclosure of assets and liabilities to be filed by the parties. Guidelines were issued in exercise of powers under Article 136 read with Article 142 of the Constitution of India, prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings. The judgment was delivered on 04.11.2020. The affidavit was to be submitted in all maintenance proceedings including pending proceedings. The directions given are extracted as under:

"72. Keeping in mind the need for a uniform format of Affidavit of

Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1 (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings

before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2 (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya V. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915]. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.”

Thus upon plain reading of the provision contained in Section 24 of the Hindu Marriage Act and the decision of the Hon'ble Supreme Court it is clear that the Courts while adjudicating the petition under Section 24 of the Hindu Marriage Act 1955 is required to follow the guidelines as laid down by the Hon'ble Apex Court apart from considering other evidence to be adduced by the parties.

Now upon perusing the decision of Hon'ble Apex Court in the matter of Aditi Alias Mithi (supra) it is clear that the Hon'ble Court laid down the guideline with regard to awarding maintenance in either petition U/S-125 Cr.P.C, or under Section 24 of the Hindu Marriage Act 1955 or under any other statute as it appears from 72.2. of the Judgment of Aditi Alias Mithi. Now the question which comes for consideration is whether the guidelines apply in case of litigation costs as provided under Section 24 of The Hindu Marriage Act 1955.

Although Section 24 of the Hindu Marriage Act 1955 provides both litigation Costs and Maintenance Pendente lite but considering the observation of the Hon'ble Apex Court in the matter of Aditi Alias Mithi (supra) that the format laid down may be modified by the court concerned, if the exigency of a case require the same, and it would be left to the judicial discretion of the court concerned to issue necessary directions in this regard, this court is of the view that it may not be unreasonable to take up the issue of litigation costs for decision before going into the issue of maintenance pen-dente-lite Moreover the decision of the Hon'ble Apex Court specifies about maintenance, and not litigation costs. As payment of litigation costs is a matter of exigency the same should be given priority before other issues are taken up viz, maintenance pende lite or hearing of the suit. It is well settled that maintenance is awarded so that a person, dependant on his near relation does not starve and as human existence in a civilized society depends not only on food but also clothing, shelter, education, medical expenses, and all that is required for a decent living in a civilized society, maintenance does not mean only fooding. Different factors are taken into consideration while awarding maintenance under different provisions of statute to a wife or any other dependants, but that does not include litigation costs. The question of payment of litigation costs comes when a case is instituted, and determination of litigation costs does not depend on factors like income of the parties or assets of the parties or status of the parties. A person litigating in any court or tribunal is required to incur expenditure for the said purpose irrespective of his or her income or status.

Total litigation costs depend upon the period of litigation and courts have the power and duty to award litigation costs which in the opinion of Court is reasonable. Courts while awarding litigation costs are to take into consideration the period which in the opinion of the Court may take for the disposal of the case and the fees which is charged by Learned Advocate while conducting the case, and in this regard the party applying for litigation costs may be required to plead the fees charged by his Learned Advocate for drafting and appearance. In the event the fees of the Advocates is not pleaded in the petition for litigation expenses, Learned Judge may request the Learned Advocate to make necessary incorporation in the pleadings or may ask about the fees charged by the Learned Advocate in conducting such cases or the fees he is charging from the litigant concerned and thereafter taking into consideration the Court fees and incidental charges may award litigation costs. As an Advocate is an officer of the Court any pleadings with regard to

his fees and statement made by him in Court regarding his fees should not be disbelieved. The Court has discretion to award litigation costs in lump-sum or monthly. However as it is difficult to decide as to the period within which a case is likely to be disposed and in some cases there may be challenge of the interlocutory orders before the higher forum for which there may be further delay in disposal of the matrimonial case and further legal expenses before higher forum it is reasonable to fix litigation costs to be paid monthly till the disposal of the matrimonial suit.

It is the basic right of a person to defend any case brought against him before any Court or tribunal and for defending the case a party in a matrimonial suit may have to engage on Advocate on some dates who is an expert in matrimonial law or who has vast experience in the said law, and by virtue of experience and seniority is well equipped to conduct a matrimonial suit. Thus this aspect should also be taken note of while fixing litigation costs. A matrimonial dispute is not just a legal dispute, it is a family problem and social concern and therefore matrimonial dispute should not be viewed from the glasses of legal technicalities. It should be appreciated keeping in view the human consideration being a conflict between husband and wife. Although there are litigations under different statutes, but nowhere there is provision of providing litigation costs, it is only under marriage laws there is provision for providing litigation costs. Hence section 24 of the Hindu Marriage Act 1955 is a welfare provision.

As India is considered to be a welfare states and there are welfare litigations regarding maintenance to wife and dependants similarly Section 24, of The Hindu Marriage Act 1955 is also a welfare provision in the said statute which must be implemented in its letter and spirit. As in the application C.O. 111 of 2022 the first challenge is with regard to awarding monthly litigation costs instead of litigation costs of Rs. 15,000/- lumpsom as prayed for by the Respondent wife Bijali Maity, and the second challenge is with regard to awarding litigation costs without considering the Affidavit of assets, it is necessary to answer both the issues. With regard to the first issue. as discussed above that the Courts have discretion to grant litigation expenses either monthly or lumpsom, and it is reasonable to grant litigation Cost on monthly basis, as the period which litigation may continue may not be contemplated in advance, and as Section 24 of The Hindu Marriage Act 1955 is a welfare provision as observed above Courts are empowered to award litigation costs which in the opinion of the Court is reasonable and the amount awarded may be less or more than the amount claimed.

Now with regard to the issue of awarding Litigation Costs prior to submission of affidavit of assets as the decision of the Hon'ble Apex Court in the case of Aditi Alias Mithi (supra) mainly deals with grant of maintenance and further provides that the guidelines laid down may be modified in case of exigency the issue of litigation costs may be viewed from different perspective.

As from Section 24 of The Hindu Marriage Act 1955 which is a welfare provision it will appear that Courts have power to award maintenance pendent lite as well as litigation costs, the question which comes for consideration is whether litigation costs should be awarded at the very outset on the first day before adjudicating the application for maintenance pendent lite for awarding maintenance on the basis of affidavit of assets filed and other evidence. Secondly whether wife who is a respondent in a matrimonial suit should be given litigation costs on priority basis before disposal of the maintenance pendent-lite application.

Although Section 24 of The Hindu Marriage Act does not distinguish between husband and wife but women in India are required to be given some protection and Article 15(3) of the Constitution of India recognises the fact that the women in India have been socially and economically handicapped for centuries and as a result thereof, they cannot fully participate in the socio economic activity of the nation on a footing of equality, thus priority to women is given in some fields. In order to give protection to women welfare legislation viz maintenance law under Adoption and Maintenance Act 1956, Section 125, of the Code of Criminal Procedure and Protection of Women from Domestic Violence Act are framed. It is from this perspective litigation costs under Section 24 of The Hindu Marriage Act should be viewed when the wife is the respondent/defendant, and seeks litigation costs.

It is to be remembered that when a wife leaves matrimonial home due to some disputes and differences and sometimes under compelling circumstances there is an element of depression and mental instability. In such a situation the wife has to go to her paternal house, and either she has to take up some work to earn her livelihood if she is not already employed or has to depend on her parents. In such a situation it would not be just and proper to compel the wife concerned to bear the litigation costs till application for maintenance pendent lite is decided. A wife may earn her livelihood after leaving matrimonial home, and she may be able to maintain herself to some extent but as maintenance includes food clothing, shelter, medical expenses and other incidental expenses for a decent living but the same does not include litigation costs, she may not be compelled to pay litigation costs in a

suit not instituted by her but against her by her husband. A wife after incurring expenditure for food clothing and shelter may be able to make some savings for future contingencies but that does not make her liable for payment of litigation costs in a matrimonial suit instituted by her husband. A wife while living separately is unable to get the benefits of joint income of her husband and herself thus when she has to depend on her own earning she is required to make some savings for future contingencies. Thus it would be unreasonable to compel the wife to incur the litigation costs in a case instituted against her by her husband unless the income and savings are exorbitant compared to the nominal litigation costs or that she has large number of assets and huge income from the same or when she is provided an Advocate from Legal Service Authority.

As dignity of a women is to be protected it should be ensured that women are not compelled to incur unnecessary expenditure and face hardship.

As consideration of the issue of quantum of maintenance pendente lite to be awarded requires statement of income and affidavit of assets to be filed by the parties for consideration of the same it takes certain amount of time and few dates are required to be fixed for the said purpose, and as the wife will also be required to incur legal expenditure for the said period including Advocate's fees, the decision with regard to awarding costs of the proceedings should not be deferred till decision of the application for maintenance-pendente lite on the basis of affidavit of assets and other evidence. A wife when required to appear in Court has to engage an Advocate and pay some fees along with incidental costs for appearance in Court. Thus when initial expenditure is incurred, respondent wife should not be compelled to incur further expenditure in conducting her case, and should not be made to wait till application for maintenance penden-te lite is decided. A wife who is compelled to come to Court and answer the claim of her husband in a matrimonial suit has every right to claim litigation costs at the outset. The litigation costs should be awarded on the very first day of moving the application at the motion stage, and should not be deferred till decision on considering objections and affidavit of assets and evidence. In the event upon considering the written objections, and affidavit of assets and evidence the Court comes to the conclusion that the income of the respondent wife is exorbitant or she has several assets providing huge income or there exists a very exceptional circumstance for which litigation costs may not be granted, Learned Court may modify vary or alter or recall the litigation costs granted

on the very first date at the motion stage. Thus granting litigation costs to wife when she is respondent in a matrimonial suit is the rule and rejection is exception. However the same principles may not apply with regard to litigation costs when wife has instituted the matrimonial suit and is the petitioner in the said suit. In such a case the decision with regard to litigation costs may be taken after considering objection and affidavit of assets.

In view of the discussion made hereinabove and with due respect to the order of Hon'ble Supreme Court in the matter of Aditi Alias Mithi (supra) and Rajesh VS Neha and anr (supra) this Court is of the view that the Learned Court below did not err in deciding the issue of litigation costs without affidavits of assets as both parties were heard before arriving at the findings.

Moreover the respondent wife did not pray for maintenance, pendente lite for which affidavit of assets is mandatory, and the fact that she is already awarded maintenance in section 125 CrPC proceedings and proceedings under protection of women from Domestic Violence Act prima-facie shows that she has no sufficient income to maintain herself. Thus the question of directing the wife to bear her own litigation cost does not and cannot arise. However the principle adapted by the Learned Judge while deciding litigation costs is not fully correct. From the Order dated 9/11/2021 passed by Learned Court below it appears that the Learned Court erred in making adjustment of the amount received by the respondent wife as maintenance from the litigation cost adjudicated by the Court. The purpose of awarding maintenance is to protect the wife from starvation and to ensure that she lives decent life, and litigation costs are not taken into consideration while awarding maintenance. On the other hand litigation costs are awarded so that a wife against whom matrimonial suit is instituted can contest the same without hardship. While awarding maintenance, the factors namely food, clothing, shelter medical expenses are normally taken into consideration, and while awarding litigation costs, fees of the Learned Advocate of the applicant and court fees as discussed above are taken into consideration. Thus there is no scope to adjust maintenance awarded from litigation costs and thereafter directing payment.

Although the amount of Rs. 3,000/- litigation costs per month which the petitioner husband Partha Sakha Maity was directed to pay is not unreasonable but considering the fact that the Matrimonial suit No-22/2018 was stayed for a long period and litigation costs of Rs.1,500/- paid every month and the fact evidence of P.W.-2 already started, in the interest of

Justice the litigation costs is reduced to Rs. 2,000/- per month to be paid from date of this Order. Now with regard to Order no-62 dated 11/03/2022 passed by the Learned Court below in Mat Suit-22/2018 it appears that the Learned Court below proceeded with the suit and allowed evidence to be adduced in the suit inspite of the fact that litigation costs is not paid. A litigation costs is awarded with the objective that a litigant in whose favour the Order is passed is able to pursue the litigation without hardship. Hence it is incumbent upon the Court to ensure that litigation costs are paid before proceeding with the suit specially when the party in whose favour litigation cost is awarded is respondent wife. A party aggrieved with regard to awarding litigation costs may move the higher forum and in that event the Learned Trial Court may adjourn the matter to a particular date to bring necessary orders from the higher forum or to stay further hearing of the suit till the matter is finally decided before the higher forum but in the event of non-payment of litigation costs the trial Court should not proceed with the Matrimonial suit where default is committed by petitioner. Thus the Learned 'Trial Court erred in proceeding with the suit. Thus the said order cannot be sustained and the same should be set aside.

Hence both the Revisional Applications being CO. 111 of 2022 and CO. 1071 of 2022 stands disposed. Order no. 58 dated 9.11.2021 passed in J.Misc Case no. 11 of 2018 by Learned Additional District Judge 2nd Court Contai Purba Medinipur is modified to the extent that the opposite party in the said case and petitioner in C.O. 111 of 2022 Partha Sakha Maity shall pay Rs. 2,000/- per month to Bijali Maiti (paria) petitioner in J. Misc case 11/2018, and opposite party in C.O. 111 of 2022. Such payment is to take effect from the date of this Order. The petitioner Partha Sakha Maity shall make the payment to Bijali Maity within 10th day of every month in advance. The first payment shall be made within 10th of May 2024. In the event any amount is due and payable in terms of earlier order passed by this Court on 28/04/2022. in C.O. 111 of 2022 such payment to be made by 15/05/2024. With regard to the Order no. 62 dated 11.03.2022 passed in Matrimonial Suit No. 22 of 2018 by Learned Additional District Judge 2nd Court Contai the said order stands modified to the extent with the direction that the Learned Court shall proceed with the suit only when the litigation costs in terms of this order is paid. It is clarified that in the event there is any breach in payment of litigation costs every month the Learned Court shall stay the proceedings of the suit till it is cleared.

*Disclaimer: Always compare with the original copy of judgment from the official website.