

AD-05
Ct No.01
Jalpaiguri
08.02.2023
TN

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CO 138 of 2022

Nripendra Chandra Mahanta
Vs.
Smt. Pramila Mahanta

Mr. Subhasish Misra,
Mr. Swarup Das

.....for the petitioner

Mr. Hillol Saha Podder,
Ms. Mousumi Das

....for the opposite party

Learned counsel for the petitioner submits that the opposite party-wife obtained the impugned order of alimony at the rate of Rs.7,000/- per month and litigation costs of Rs.5,000/-, which is exorbitant considering that the petitioner is a retired school teacher. That apart, it is submitted that the norms as laid down by the Supreme Court in the case of *Rajnish vs. Neha* [(2021) 2 SCC 324] have not been complied with in the present case inasmuch as no affidavit was filed, as required in law, by the petitioner at any point of time.

Learned counsel appearing for the opposite party contends that in the evidence, the petitioner-husband

admitted that he is the owner of a rice mill. That apart, the petitioner is a retired school teacher and earns substantial pension. Moreover, it is submitted that, to live a life of comfort, dignity and respect, as observed by the trial court, even the amount of Rs.7,000/- per month is extremely paltry.

Learned counsel for the petitioner controverts the allegation with regard to admission of the petitioner having a rice mill and points out to the portion of the evidence which says that such mill is now closed.

Heard learned counsel for the parties.

Although learned counsel for the petitioner is justified in arguing that the proposition laid down in *Rajnish vs. Neha* has not been observed at all in the present case, on humanitarian consideration and considering that the marriage between the petitioner and the opposite party is still subsisting, it cannot be gainsaid that the petitioner is entitled to get at least some amount of *ad hoc* alimony from the petitioner-husband.

Keeping in view the above considerations, CO 138 of 2022 is allowed, thereby setting aside the impugned order and directing the District Judge, Cooch Behar to re-decide the application for alimony filed by the petitioner subject to directing the filing of affidavits in compliance with the proposition laid down in the judgment of the Supreme Court as indicated above and

to decide the same afresh within a reasonable period, preferably within six months from the date of communication of this order to the said court. The above order will subsist on condition that the petitioner-husband goes on paying to the opposite party-wife an amount of Rs.4,000/- per month on an *ad hoc* basis for maintaining the opposite party-wife, apart from the medical expenses incurred by the wife upon the opposite party-wife handing over copies of the necessary documents indicating the costs incurred on her medical expenses account to the petitioner-husband.

It is made clear that the merits of the matter, inasmuch as the rehearing is concerned, have not been gone into by this court at all.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)