

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revisional Jurisdiction)

Dated : 12th September, 2024

SINGLE: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

CrI.Rev.P. No.05 of 2024

Revisionist/Petitioner : Sujit Kumar Saha

versus

Respondent : Laxmi Gupta

Revision Petition under Sections 397/401 of the
Code of Criminal Procedure, 1973

Appearance

Ms. Gita Bista, Advocate with Ms. Pratikcha Gurung, Advocate for
the Petitioner/Revisionist.

Mr. Kazi Sangay Thupden, Advocate with Mr. Sajal Sharma, Ms. Som
Maya Gurung and Ms. Prerana Rai for the Respondent.

JUDGMENT (ORAL)

Meenakshi Madan Rai, J.

1. The Revisionist is before this Court impugning the Order dated 09-04-2024, of the Court of the Learned Judge, Family Court, at Namchi District, Sikkim, in Family Court (Criminal) Case No.22 of 2023 (*Laxmi Gupta vs. Sujit Kumar Saha*). The case of the Revisionist/Respondent (hereinafter the "Revisionist") is that, the Respondent/Petitioner (hereinafter the "Respondent"), had filed a Petition under Section 125 Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."), read with Section 7 of the Family Courts Act, 1984, before the Learned Family Court, claiming maintenance for herself and for her daughter, amounting to ₹ 1,00,000/- (Rupees one lakh) only, per month, from the Revisionist.

2. While objecting to the said Petition, the Revisionist averred in his response that the Respondent was not entitled to the maintenance claimed as she had wilfully left her matrimonial home.

In the interim, the Revisionist was again before the Learned Family Court with an application under Section 126 of the Cr.P.C. claiming that the Learned Family Court had no jurisdiction to consider the matter as the Respondent was not a resident of Namchi, Sikkim, but of Nepal, thereby disentitling her to the maintenance claimed. The Respondent filed her response to the Section 126 Cr.P.C. application.

3. The Learned Family Court took up both the Petitions simultaneously for hearing but issued the impugned Order dated 09-04-2024, observing *inter alia* that in the interest of justice an interim maintenance for two months be granted to the Respondent for a sum of ₹ 25,000/- (Rupees twenty five thousand) only, from April, 2024, till the pendency of the hearing of the Petitions. The matter was thereafter ordered to be listed for further hearing on 10-06-2024, the Court being of the view that matters pertaining to the parties was also before the Hon'ble Supreme Court.

4. The Respondent before the Hon'ble Supreme Court, had sought a transfer of the proceedings filed by the Revisionist under Section 9 of the Hindu Marriage Act, 1955, in MAT Suit No.43 of 2023 (*Sujit Kumar Saha vs. Laxmi Gupta*), from the Court of the Learned Additional District Judge, 3rd Court, Malda, West Bengal, to the Learned Family Court, Namchi, Sikkim. The Supreme Court allowed the transfer of the said matrimonial dispute from Malda to Namchi, vide Order dated 24-04-2024 in Transfer Petition(s) (Civil) No(s).333 of 2024 (*Laxmi Gupta vs. Sujit Kumar Saha*). Vide the Order of the Supreme Court dated 30-07-2024, in Miscellaneous Application No.1258/2024, in Transfer Petition(s) (Civil) No(s).333 of 2024 (*Laxmi Gupta vs. Sujit Kumar Saha*) the Transferee Court, i.e., the Learned Family Court, Namchi, was directed to make an

endeavour for an amicable settlement of the dispute through Mediation.

5. It is jointly submitted by Learned Counsel for the parties that the Learned Family Court, at Namchi, on perusal of the Orders of the Supreme Court, reduced the interim maintenance from ₹ 25,000/- (Rupees twenty five thousand) only, per month, to ₹ 15,000/- (Rupees fifteen thousand) only, per month, and referred the matter for Mediation in terms of the directions of the Supreme Court. The Order granting such reduction is not before this Court, however both parties jointly submit that such an order was indeed issued by the Learned Family Court. There is no reason for this Court to disbelieve the joint submissions of Learned Counsel for the parties.

6. It is understood and also jointly submitted by Learned Counsel for the parties that the matter is now pending before the Mediation Centre, South Sikkim.

7. Admittedly, the Petition under Section 126 of the Cr.P.C. filed by the Revisionist is yet to be heard. Both parties submit that they have filed their respective relevant documents pertaining to their income before the Learned Family Court. Pausing here momentarily, it is relevant to point out that the Revisionist herein had filed the application under Section 126 Cr.P.C. but has given himself the nomenclature of Respondent instead of Petitioner, which thereby creates a conundrum. The Revisionist for the sake of clarity shall take necessary steps to amend the Cause Title of the Petition under Section 126 of the Cr.P.C. filed by him as he is the Petitioner and not the Respondent therein.

8. Having heard the Learned Counsel for the parties and perused all documents on record, it is apposite to cite here the observation of the Supreme Court in **Madhu Limaye vs. The State of Maharashtra**¹ which is extracted hereinbelow as follows;

"12. Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of *Halsbury's Laws of England* at p. 742, however, it has been stated in para 1606:

... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required.

In para 1607 it is said:

In general a judgment or order which determines the principal matter in question is termed "final".

In para 1608 at pp. 744 and 745 we find the words:

An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declaration of right already given in the final judgment, are to be worked out, is termed 'interlocutory'. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

It is thus clear from the above pronouncement that if an order is passed in a pending proceeding and the proceeding does not terminate finally nor are rights and liabilities of the parties decided in finality, then that order shall be considered as an interlocutory order.

9. In the instant case, it is evident that the Order directing the Revisionist to pay maintenance of ₹ 25,000/- (Rupees twenty five thousand) only, per month, on 09-04-2024 and thereafter reducing it to ₹ 15,000/- (Rupees fifteen thousand) only, per month, is only an interlocutory order. Further the Petition under Section 126 of the Cr.P.C. has not even been heard by the

¹ (1977) 4 SCC 551

Learned Family Court, far be it to have even passed an interim order under the said Petition. In the said circumstances, this Court is not inclined to disturb the impugned Order of the Learned Family Court granting interim maintenance when the rights and liabilities of the parties have not attained finality.

10. The Revisionist cannot put the cart before the horse and rush to this Court on perceptions of injustice. The Petition of the Revisionist being premature deserves to be and is accordingly dismissed.

11. Copy of this Judgment be forwarded to the Learned Family Court forthwith for information.

(Meenakshi Madan Rai)
Judge

12-09-2024

Approved for reporting : **Yes**