

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION  
APPELLATE SIDE

**Present:**

**The Hon'ble Mr. Justice R. K. Bag**

**C.O. No. 4201 of 2013**

**Sri Ramtaran Chakraborty**  
**-Versus-**  
**Smt. Sonali Chakraborty**

For the Petitioner: Mr. Balaram Neogi

For the Opposite Party: Mr. Rajarshi Basu

Heard on: 5<sup>th</sup> September, 2014.

Judgement on: 5<sup>th</sup> September, 2014.

**R. K. Bag, J. :-**

This revisional application under Article 227 of the Constitution of India arises out of order dated 16<sup>th</sup> November, 2013 passed by learned Additional District Judge, 4<sup>th</sup> Court, Alipore in Matrimonial Execution No. 29 of 2011 arising out of Mat. Suit No. 11 of 2009, by which learned Judge of the Court below gave direction for attachment of salary of the petitioner at the rate of Rs. 10,000/- per month for realisation of Rs. 60,000/- as arrears of maintenance for payment to the opposite party.

2. It appears from the record that the petitioner filed Mat. Suit No. 11 of 2009 against the opposite party praying for divorce before the Court of learned Additional District Judge, 4<sup>th</sup> Court, Alipore. The opposite party-wife filed an application in the said Mat. Suit for alimony *pendente lite*. By passing order of 1<sup>st</sup> July, 2010 in Mat. Suit No. 11 of 2009, the Court granted alimony *pendente lite* in favour of the opposite party-wife at the rate of Rs. 5,000/- per month and the litigation cost of Rs. 5,000/- at a time. The said order dated 1<sup>st</sup> July, 2010 passed by learned Additional District Judge, 4<sup>th</sup> Court, Alipore in Mat. Suit No. 11 of 2009 was affirmed by this Court on 10<sup>th</sup> September, 2010 in C.O. No. 2832 of 2010. The petitioner made unsuccessful attempt for modification of the said order by filing another civil revision before this Court which was disposed of on 11<sup>th</sup> April, 2013 in C.O. No. 4004 of 2012. Thereafter, the opposite party filed Matrimonial Execution No. 29 of 2011 before the said Court for realisation of Rs. 60,000/- as arrears of maintenance from the petitioner. Learned Additional District Judge passed the order on 16<sup>th</sup> November, 2013 directing the salary disbursing authority of the petitioner to deduct Rs. 10,000/- per month from the salary of the petitioner till realisation of Rs. 60,000/-. The said order is under challenge before this Court in this revision.

3. By submitting copy of two pay certificates of the petitioner for the month of June, 2011 and October, 2011, Mr. Balaram Neogi, learned counsel for the petitioner submits that the gross salary of the petitioner is not more than Rs. 19,500/- and deduction of Rs. 10,000/- per month from the salary of the

petitioner by way of attachment of the salary for the purpose of realisation of arrears amount of maintenance of the opposite party will be in violation of the provisions of Section 60 (i) (ia) of the Code of Civil Procedure and as such, the order passed by learned Additional District Judge needs to be modified.

4. On the other hand, Mr. Rajarshi Basu, learned counsel appearing on behalf of the opposite party submits that the petitioner has not produced the current pay certificate to ascertain the gross salary of the petitioner and that the order of attachment of the salary must be confined to  $\frac{1}{3}$  of the gross salary as laid down under the provision of law and as such, the order may be suitably modified for realisation of Rs. 60,000/- as arrears of maintenance of the opposite party.

5. Having heard learned counsels of both parties, I find that the petitioner has produced the pay certificates of June, 2011 and October, 2011, which indicate that the gross salary of the petitioner was Rs. 17,090/- in the month of June, 2011 and Rs. 18,570/- in the month of October, 2011. The increase of salary of the petitioner by Rs. 1,500/- must be for getting increment in between June, 2011 and October, 2011. By the said calculation the salary of the petitioner must have been increased upto Rs. 4,500/- till October, 2014. In the absence of any other document before this Court for ascertaining the gross salary of the petitioner, I can safely rely on the

two pay certificates of the petitioner and come to the conclusion that the present gross salary of the petitioner will be about Rs. 22,000/- per month. In view of the provisions of Section 60 (i) (ia) of the Code of Civil Procedure, the attachment of gross salary of the petitioner for realisation of arrears amount of maintenance of the opposite party-wife must be limited to  $\frac{1}{3}$  of the gross salary. Accordingly, the amount of deduction per month must not exceed of Rs. 7,000/- per month. Since learned Additional District Judge directed the salary disbursing authority of the petitioner to deduct Rs. 10,000/- per month from the salary of the petitioner which is more than  $\frac{1}{3}$  of the gross salary of the petitioner, I am inclined to modify the order passed by learned Additional District Judge so that the entire amount of arrears of maintenance may be realised from the gross salary of the petitioner by way of deduction at the rate of Rs. 6,000/- per month with effect from October, 2014.

6. In view of my above findings, the impugned order dated 16<sup>th</sup> November, 2013 passed by learned Additional District Judge, 4<sup>th</sup> Court, Alipore in Matrimonial Execution No. 29 of 2011 is modified to the extent that the salary disbursing authority of the petitioner is directed to deduct Rs. 6,000/- per month from the salary of the petitioner with effect from the month of October, 2014 till realisation of Rs. 60,000/- as directed by learned Judge of the Court below. With this observation, this revisional application is disposed of.

The department is directed to send down a copy of this judgment to the learned Court below for favour of information and necessary action.

Criminal Section is directed to supply urgent certified xerox copies of this order to the parties, if applied for, after compliance with all necessary formalities.

**(R. K. Bag, J.)**