

Party Name : RUPAK KR. ACHARJEE Vs ANTARA NANDI & ANR

THE HONBLE MR. JUSTICE S.TALAPATRA

Heard Mr. J. Majumder, learned counsel appearing for the petitioner.

The challenge against the order dated 01.07.2015 delivered in Misc. (Int.) 191 of 2014 by the Judge, Family Court, Agartala, West Tripura falls within a short compass.

Having regard to the nature of the challenge, this Court is of the considered opinion that for disposal of this petition, no notice is required to be issued to the respondent No.1, who is also representing the respondent No.2 in the proceeding.

Mr. J. Majumder, learned counsel having referred to the order dated 01.07.2015 has submitted that the respondent No.1 is not the petitioner's legally married wife inasmuch as her marriage with one Dipan Shil is still subsisting in the eye of law and as such, the respondent No.1 cannot get any amount of maintenance from the petitioner. However, Mr. Majumder, learned counsel appearing for the petitioner has submitted that he has no opposition against the interim order of maintenance as passed in favour of the respondent No.2. Mr. Majumder, learned counsel on his usual fairness has further submitted that even in the written objection filed before the Family Court, the petitioner has admitted that he would maintain the respondent No.2. In the impugned order dated 01.07.2015, the Judge, Family Court, Agartala, West Tripura has observed as under:

On the other hand, the O.P. denied the allegation by filing his W/O made by the petitioner against him and stated that the petitioner willingly left her matrimonial home for no fault on the part of the O.P. That is also transpired that the petitioner No.1 is the wife of one Dipal Shil and their marriage was registered before the Registrar, Hindu Marriage, Agartala on 12.01.2007 and as such, the O.P. also instituted a divorce proceeding against the petitioner No.1.

That apart Mr. Majumder, learned counsel has raised serious objection as to the subsequent observation made in the impugned order dated 01.07.2015 where it has been observed that:

"I find that when the marriage in between the petitioner No.1 and the O.P. is not disputed in this case, and when it is admitted by the O.P. that the petitioner No.2 is his son by the petitioner No.1, I find this is a fit case for grating interim maintenance as prayed for specially when admittedly the petitioner No.1 is living separately fro the O.P. having no source of income."

Mr. Majumder, learned counsel has also submitted that the Judge, Family Court without directing its consideration to the records, particularly to the written objection filed by the petitioner as the O.P has suddenly arrived at the finding, which is highly prejudicial to the petitioner and on the top of it, it pre-empts the serious objection taken in the written objection as regards the status of the respondent No.1 to claim maintenance from the petitioner.

This Court after scrutinizing the records finds sufficient substance in the challenge. Unless the marriage is specifically admitted, in the interim order such observation as stated, as to the disputed status is to be avoided else it might cause prejudice to the process of adjudication. As such, the observation as made in the impugned order dated 01.07.2015 that the marriage between the petitioner and the respondent No.1 is not disputed is expunged and it will have no impact in adjudicatory process of the main petition. The Judge, Family Court, Agartala, West Tripura is, therefore, directed to decide the *prima-facie* status on the basis of the pleadings and the evidence that may be led in Misc. No.190 of 2014. The Judge, Family Court, Agartala, West Tripura is further directed that the proceeding being Misc. 190 of 2014 shall preferably be completed within 3(three) months from the date when this order would be available from this Court.

Before parting with the records, it is made clear that without any prejudice to the petitioner's contention as projected in the written objection as to the status of the respondent No.1, the petitioner shall pay the interim maintenance as determined by the impugned order till the proceeding being Misc. No.190 of 2014 is disposed by the Judge, Family Court, Agartala, West Tripura.