

10.12.2020
Court No. 19
Item No.16
CP

C.O. 835 of 2020

Soumarya Saha
vs.
Kamalika Saha & anr.

Mr. Sounak Bhattacharya

....for the petitioner.

This is an application filed by the husband in Matrimonial Suit No. 346 of 2018, pending before the learned District Judge, Hooghly. The petitioner is aggrieved by an order dated January 20, 2020. By the order impugned, the learned court below rejected an application filed by the plaintiff/husband for pronouncing judgment on the plaint itself on the ground that the wife/defendant had failed to file the written statement even within the extended period granted by the court.

According to Mr. Bhattacharya, Order 8 Rule 10 of the Code of Civil Procedure which was amended in 2002 was mandatory and if a defendant failed to file the written statement within the extended period as directed by the court, the court was bound to pronounce judgment without giving any further extension.

Records reveal that the learned court below came to the conclusion that the wife had taken steps

in the suit and had prayed for a stay of the proceeding which could not be heard and, as such, no laches occurred. The written statement was not filed within the time limit extended by the court for bona fide reasons. It is also on record that the wife had prayed for maintenance pendente lite and was persuing the said application.

The court has relied on several decisions of this court and the Hon'ble Apex Court to come to the conclusion that in appropriate cases the court could extend the time again if the defendant failed to file the written statement within the earlier extended date.

The Calcutta Amendment to Order 8 Rule 1 of the Code of Civil Procedure also allows such extension. The court also held that when the application for maintenance pendente lite was pending, forcing the wife to appear in court and file written statement could not be treated as mandatory in view of the decision of this court wherein it had been held that the time frame provided under Order 8 Rule 1, as amended in the year 2002 would not strictly apply in matrimonial proceedings. Unless the wife got financial assistance or maintenance, it would not be proper to expect the wife to take prompt steps in the suit. The court has found that the wife has also shown her bona fide and the reasons have been accepted by the court as to why the written

statement could not be filed within the time period prescribed under the statute and, thereafter, fixed by the court. It is also true that this is a matrimonial case. Procedure is the handmaid of justice and the court must aim at doing substantial justice. This is a matrimonial suit and social order requires that a suit of such nature should not go uncontested in view of the far reaching effect it may have on the parties and their families.

When the learned court below has exercised discretion and accepted the written statement for reasons recorded in writing and having found a bona fide intention on the part of the defendant, I do not find any reason to interfere with the order impugned.

However, rejection of this application shall not be used as a shield in future by the defendant to cover up any negligence and laches in contesting the suit.

As it is informed by Mr. Bhattacharya that no interlocutory applications are pending, the learned court below is requested to dispose of the Matrimonial Suit No. 346 of 2018 expeditiously, preferably within a period of one year from the date communication of this order.

The revisional application is, thus, dismissed. There shall be no order as to costs.

Copy of this revisional application be served upon the opposite party along with a server copy of this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)