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09.10.2020
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C.O. 1234 of 2020

With
IA No. CAN 1/2020

(Via Video Conference)

Dipankar Ghosh
Vs.
Susmita Ghosh

Mr. Raghunath Chakraborty,
Ms. Tanusree Das
... For the petitioner.

Mr. Sanjoy Mukherjee
... For the opposite party.

The husband, being the petitioner/plaintiff in the revisional application filed a matrimonial suit, being MAT Suit No.69 of 2015, now pending before the 6th Additional District Judge, Alipore.

The petitioner says that after the suit was instituted an amendment to the plaint was prayed for and was allowed by the court below. The opposite party/wife being the defendant in the said matrimonial suit, after the amendment, had filed a written statement. The petitioner further says that all on a sudden without the leave of the court, the opposite party/wife filed an additional written statement with counter-claim without seeking leave of the court and without serving a copy thereof on the petitioner/husband. The same was taken on record by the court below. The petitioner/husband appears

to have filed an application before the court below for rejection of the counter-claim but never prayed for any leave to file written statement to deal with the counter-claim filed by the opposite party/wife. Order No.18 dated 8th March, 2018 clearly records the filing of the additional written statement with counter-claim and a copy thereof having been served. The petitioner/husband was present on that date and had filed hazira. On 8th March, 2018, issues were also framed. It does not appear from the said order that the petitioner/husband ever prayed for time to file written statement to deal with the counter-claim. The petitioner says that from Order No.21 dated 9th October, 2018 it will appear that the petitioner received a copy of such written statement and counter-claim on 9th October, 2018. On perusal of the written statement annexed to the revisional application at page 31, it will appear that a copy of the written statement along with counter-claim of the wife was placed on record since the advocate for the petitioner/husband was not present. It will also appear from the subsequent endorsement that a copy was received on 9th October, 2018. If the petitioner was present on 8th March, 2018 as recorded in the order, it is not appreciated how the petitioner did not receive a copy of the written statement with counter-claim filed by the opposite party/wife. Even if it is

accepted that the petitioner through his advocate had filed the hazira and the said advocate was not present at the time when the matter was actually taken up then also it was the responsibility of the petitioner and his advocate to look into the record and collect the written statement along with the counter-claim filed by the wife immediately thereafter. The petitioner has also not challenged the order dated 8th March, 2018. It further appears from Order No.22 dated 8th January, 2019 that the petitioner/husband did not make any prayer for filing written statement to the counter-claim of the opposite party/wife. It also appears from the order i.e., Order No.40 dated 28th February, 2020 that the petitioner did not avail the opportunity of filing the written statement between 8th March, 2018 or 9th October, 2018 till 28th February, 2020 and only took a chance by filing an application for rejection of the counter-claim. The learned court below after considering the previous orders had rejected the application under Order VII Rule 11 of the Code of Civil Procedure 1908 filed by the petitioner/husband.

I find no infirmity or irregularity in the order dated 28th February, 2020. The same is supported by cogent reason and has been passed after considering the material facts and relevant legal provisions. The petitioner/husband instead of filing

the written statement took a chance by filing an application for rejection of the counter-claim. After filing of such application and the same having been rejected, the petitioner/husband cannot be granted an opportunity to reopen the case once more and take it back to the stage of filing written statement to the counter-claim when he did not file the same for two years which lapsed in between.

The revisional application fails and the same is dismissed along with the connected application without any order as to costs.

(Arindam Mukherjee, J.)