

17.12.2021
Ct. 21
D/L02
ab

C.O. 661 of 2020
(Via Video Conference)

Subrata Halder
-Vs-
Smt. Basabdata Halder & Anr.

Mr. Sobhan Majumder,
Ms. Kalpita Paul,

... for the petitioner

Mr. Mrinmoy Chatterjee
Ms. Deblina Lahiri,

... for the opposite parties

Assailing the order of expunging the name of Gopal Bairagy, Respondent no. 02/ the adulterer from the cause title of the plaint of Mat. Suit 462 of 2017 for dissolution of Marriage between the petitioner and opposite no. 1 on the ground of adultery by the learned Additional District Judge, Fast Track Court, Kalyani, Nadia on 01.10.2019, the petitioner has preferred this revisional application.

Learned Advocate for the petitioner husband refers to *Sikha Singh Vs. Dina Chakrabarty* reported in 1982 2 CHN 250 and *Arun Kumar Agarwal Vs. Radha Arun* reported in 2003 0 AIR (kar) 508 and contended in a suit for divorce on the ground of adultery the adulterer is a necessary party. In the divorce suit filed by the petitioner against the wife on the ground of adultery, the petitioner has impleaded both the wife and the adulterer as respondent no. 1 and 2, but the learned Court below by allowing the application filed by

adulterer respondent no. 2 under Order 1 Rule 10(2) Civil Procedure Code, expunged his name by passing the impugned order and which is against the ratio of the decisions referred above.

Let see whether adulterer is a necessary party in a suit for divorce on the ground for adultery filed by the husband against the wife.

It is true that it is the discretion of the Court concerned to allow a person to be added as a party or not, but Judicial discretion has to be exercised in the facts and circumstances of a particular case.

In the present case the husband has brought a suit for dissolution of a Hindu Marriage on the ground of adultery against the wife then it becomes necessary to bring on record the person who is also a partner in crime with the wife and to determine the dispute in his presence. The adulterer's presence for effectually and complete adjudication to settle all the questions involved in suit is necessary.

In *Sikha Singh* (Supra) Hon'ble High Court at Calcutta has been pleased to hold in a suit filed by husband against the wife for divorce on the ground of adultery and if the adulterer is known he should be named as he is a necessary party.

In view of the ratio laid down in the above two decisions this Court too holds the respondent no. 2 Gopal Bairagy, to be a proper party in a suit for divorce on the ground of adultery and his presence is necessary for complete and final decision on the question involved in the dispute.

Therefore, the impugned order is set aside.

Accordingly C.O. No. 661 of 2020 is hereby allowed.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

Connected applications are disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)