

23rd August,
2021
(AK)
15

C.O. 453 of 2021

**Sri Anandadeep Sen
Vs.
Smt. Swarnapa Dutta Gupta**

Mr. Partha Pratim Roy
Mr. Golam Karim Chowdhury
Mr. Latful Haque
... For the Petitioner.

Mr. Kunal Ganguly
Mr. Abdur Rakib
...For the Opposite party.

A peculiar allegation has been raised in the present application under Article 227 of the Constitution of India.

The opposite party/wife filed a proceeding under Section 25 of the Special Marriage Act, 1954 for declaration that the marriage between the parties is a nullity since the marriage was not consummated between the parties.

The opposite party/wife, in her defence, agreed to such allegation and prayed for a judgment to be delivered on admission under Order XII Rule 6 of the Code of Civil Procedure.

The grievance of both the parties is that the trial court is not permitting the filing of such application on the mistaken notion that Order XII Rule 6 is not applicable to a matrimonial suit.

There is no question of such prior assumption being taken by the trial court even before the application is filed, particularly in view of the absence of any specific bar to applicability of Order XII Rule 6 of the Code to matrimonial proceedings in the existing laws.

Accordingly, the Additional District and Sessions Judge, Baruipur, District-South 24 Parganas is directed to permit the filing of the proposed application of the opposite party/wife under Order XII Rule 6 of the Code of Civil Procedure in connection with Matrimonial Suit No.683 of 2018 at the earliest and to dispose of such application as expeditiously as possible, preferably within a fortnight from filing of the said application.

The parties as well as the trial court shall act on the written communication of the learned advocates for the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)