

02.02.2022
Ct. 21
D/L 33
AJ.

C.O. 23 of 2022
(Via Video Conference)

Smt. Nidhi @ Ishitha Mohanka.
-Vs-
Sri Aditya Vikaram Mohanka & Anr.

Mr. Jaydip Kar,
Mr. Sukanta Chakraborty,
Miss. Meenal Sinha

... for the petitioners

Mr. Saptangshu Basu,
Mr. Abishek Guha,
Mr. Karan Keswani,

...for the opposite party no. 1

The petitioner/wife/respondent being aggrieved by the order of rejection of her application for time to file Written Statement (W.S.) and for fixing the case for ex parte hearing by the learned 13th Additional District Judge, Alipore at South 24 Parganas in Matrimonial Suit No. 2227 of 2019 on 13.04.2021, has filed the present application under Article 227 of the Constitution of India.

From the submissions made by the learned Advocates for the opposite party no. 1 it is seen that the opposite party no.1/husband has filed the above Matrimonial Suit for dissolution of marriage

against the wife on the ground of adultery. The husband has also filed a petition claiming maintenance from the wife and a petition for DNA test of one of their children and which are pending. There are several Civil and Criminal cases pending between the parties in the different Courts.

It has been contended by the learned Advocates for the opposite party no. 1 that the petitioner/wife had already put appearance before the learned Court below and had filed several interlocutory applications but failed to file W.S. within statutory period of 120 days and as such the learned Court below rejected her application for time to file W.S. and fix the case for ex parte hearing.

On the other hand it has been contended by the learned Advocates for the petitioner that though the petitioner had put her appearance in the learned Court below but she was never served with the copy of the plaint and for that reason she could not file W.S. in time. He further submitted that it is not mandatory for the defendant to file W.S. within 120 days as stipulated in the Order 8 Rule 1 of Civil Procedure Code. The learned Advocates further submitted after the passing of the

impugned order the defendant has filed W.S. along with show cause notice and a petition for acceptance of W.S. in the Court below.

However, the learned Advocates for both the parties agreed that impugned order may be set aside and W.S. filed by petitioner /respondent may be accepted and necessary direction may be given to the learned Court below to dispose of the DNA test application filed by the husband and dispose of the pending Matrimonial Suit as expeditiously as possible.

Since, this Court is also of view that no one should be condemned unheard and principle of natural justice also demand right to fair hearing and to take reasonable and sensible decision after hearing both the parties to the proceeding. Therefore, in the administration of justice the impugned order is hereby set aside. The W.S. filed by the defendant lying in the learned Court below is hereby accepted on payment of exemplary cost of Rupees 5000/- by the petitioner to the opposite party no. 1. Let the Matrimonial Suit No. 2227 of 2019 be set aside from ex parte board.

The learned Court below is hereby directed to dispose of the DNA test application filed by the

opposite party no. 1 within a month from the date of communication of this order and dispose of the Matrimonial Suit within six months of receiving of the DNA test report, if the application is allowed.

Accordingly, **C.O. No. 23 of 2022 is 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.**)