

14.03.2022
(S/L-07)
Ct.-18
(Susanta)

C.O. 391 of 2019

Sri Debabrata Sikdar
-Vs-
Smt. Suchismita Sikdar

Mr. Gopal Chandra Ghosh,
.... For the Petitioner.
Mr. Nirmalendu Bera,
Mr. Prakash Chandra Mondal,
Mr. Dinesh Chandra Mondal,
.... For the Opposite Party.

The petitioner filed the matrimonial Suit No. 74 of 2008 for dissolution of his marriage with the opposite party by a decree of divorce.

The learned Additional District Judge, Diamond Harbour, District 24-Parganas (South) decreed the said suit ex parte on December 3, 2008.

The opposite party filed an application under Order IX Rule 13 of the Code of Civil Procedure for setting aside the said ex parte decree registered as Miscellaneous Case No. 1 of 2009.

The learned Trial Judge by the order no. 151 dated December 9, 2015 allowed the said miscellaneous case ex parte thereby set aside the said ex parte decree of divorce.

The petitioner thereafter filed an application for recalling of the said order. The application was registered before the learned Trial Judge as Misc. Case no. 1 of 2016.

The learned Trial Judge by the order impugned being order no. 166 dated April 30, 2018 has dismissed the said Miscellaneous Case no. 1 of 2016

holding that an application under Order IX Rule 13 of the Code is not maintainable to set aside an order passed under the said provision of the Code.

Unless prohibited, it is no fetter to the inherent power of the Court under Section 151 of the Code for recalling of the order setting aside the ex-parte decree of divorce, particularly when misquoting or non-quoting of the provision is not fatal for a decision of an application on merit.

That apart, the order impugned is completely a non-speaking order.

In view of the aforesaid, the order impugned is set aside.

The learned Trial Judge is requested to decide the application for recalling of the order setting aside the ex-parte decree of divorce afresh in accordance with law but shall ensure payment of all arrear amount of maintenance, if there be any, required to be paid by the petitioner in terms of the order of alimony pendente lite passed in the said matrimonial suit, before disposal of the said application.

C.O 391 of 2019 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)