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21-04-2022

Ct. 8

FA 81 of 2022
CAN 1 of 2022
With
CPAN 265 of 2022

Priyanka Bhowmik (Dutta)
Versus
Chiranjit Dutta

Mr. Avishek Prasad, Adv.
Ms. Sreetama Neogi, Adv.

...for the appellant

Mr. Gadadhar Basak, Adv.

...for the respondent

By consent of the parties, the matter is treated as on day's list and disposed of by this common order.

The appellant is the wife. The appellant is aggrieved by an order dated 12th January, 2021 by which the Matrimonial Suit No.228 of 2019 was decreed ex parte.

The learned Judge, on the basis of the evidence in chief and other materials exhibited during the trial, decreed the suit as no contrary evidence was adduced. This decree is under challenge. It appears from the impugned order that, several opportunities were given to the wife to appear and contest the proceeding but neither did the wife file any written statement nor participated in the said proceeding. On the basis of the unchallenged testimony, the decree was passed.

The wife preferred the appeal beyond the period of 90 days from the date of the decree. There was no operation of the decree either. In the meantime, the husband remarried on 23rd March, 2022. Although, the appeal was filed on 15th February, 2021, the memorandum of appeal and the stay petition were served upon the

husband only on 19th February, 2022.

Be that as it may, the fact remains that the husband has remarried as there was no order operating against him conducting remarriage after the expiry of the period of 90 days under section 28 the Hindu Marriage Act, 1955.

The wife appears in person and submits that she does not wish to cause any impediment to the second marriage of the respondent but she demands permanent alimony by accepting the decree and we find it to be a fair stand on the part of the wife.

Accordingly, we direct the husband to pay a permanent alimony of Rs.4,00,000/- (excluding the *ad hoc* alimony of Rs.1,00,000/-) to be paid within a period of three months from date, in default, this order shall be executed as a money decree.

The wife is agreeable to receive the said amount of Rs.4,00,000/- towards permanent alimony. The husband initially did not pay the alimony as determined in the matrimonial proceeding, however, he has paid the amount of Rs.1,00,000/- in terms of our order dated 4th March, 2022, which become payable in connection with the application filed by the appellant under Section 125 of the Code of Criminal Procedure.

The department is directed to draw up decree on the permanent alimony as expeditiously as possible.

The impugned order stands modified to the aforesaid extent.

Having regard to the fact that the wife was entitled to alimony as determined in the proceeding under Section 125 of the Code of Criminal Procedure and also considering the economic condition of the wife and to start her life afresh she would be

requirement of a lump sum amount for her sustenance, we determine the permanent alimony of Rs.4,00,000/-.

In all future proceedings the appellant would be entitled to take legal assistance of District Legal Services Authority, Dakshin Dinajpur.

The appellant shall also be entitled to approach District Legal Services Authority, Dakshin Dinajpur for any legal assistance.

The Secretary, Calcutta High Court Legal Services Committee shall communicate this order to the District Legal Services Authority, Dakshin Dinajpur for doing the needful and to render all assistance.

With the above directions, FA 81 of 2022, CAN 1 of 2022 and CPAN 265 of 2022 are accordingly, disposed of.

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

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)