

13.04.2022
Item No.5
Ct. No.7
CHC

C.O.851 of 2021
IA NO: CAN/1/2021
CAN/3/2022
CAN/4/2022
(Physical Hearing)

Debjani Banerjee
Vs.
Basudeb Banerjee

Ms. Saheli Sen,
Mr. Rajib Mullick,
Ms. Shreyashi Maity
...for the petitioner

Mr. Supratim Laha,
Mr. Balaji Chakraborty
...for the opposite party

The petitioner/wife has assailed the order dated 6th February, 2021, passed by learned Additional District & Sessions Judge, 8th Court, at Alipore, South 24 Parganas, in Matrimonial Suit No.79 of 2014, rejecting the prayer for amendment of w/s under Order 6 Rule 17 C.P.C. filed by the petitioner/wife, and directing petitioner to deposit Rs.10,000/- as costs for causing unnecessary delay, and inconvenience to the disposal of the suit.

The admissibility of some documents marked exhibit on 6th February, 2021, is also under challenge in this case.

Admittedly, the suit for dissolution of marriage has been instituted by the opposite party/husband against the petitioner/wife. On the date of examination of

witness/P.W.1, fixed on 6th February, 2021, some documents marked as exhibits have been challenged including the admissibility of such documents, while tendering such evidence. After challenging the admissibility of such documents, the petitioner declined to cross-examine the P.W.1.

The rejection of the prayer for amendment is submitted to have been done erroneously without making due adherence to the provisions of law, as per submission disclosed by Ms. Sen, learned advocate for the petitioner.

Regarding imposition of costs, learned advocate for the petitioner submits that the court has unnecessary saddled the conduct of the petitioner/wife with costs, which ought not to have been granted, and proposes for exempting the petitioner from paying the costs, for the reasons mentioned in the impugned order.

Learned advocate for the petitioner further contends that the documents, marked as exhibits, are required to be proved in evidence under the provisions of the law, without which the same ought not to have been marked exhibits.

Per contra, Mr. Laha, learned advocate appearing for the opposite party/husband submits that upon viewing the conduct of the petitioner/wife, as established in the record, the court was pleased to saddle the conduct of the petitioner/wife with some

costs, which the petitioner has already deposited, and the same must go unaltered.

Regarding the rejection of the prayer for amendment, learned advocate for the opposite party/husband submits that the amendment of written statement has been subsequently allowed by the order of the court on 6th July, 2021, and as such, there is nothing to be adjudicated further in this case.

As regards marking of exhibits of some documents, alleged to have been erroneously marked without adhering to the provisions of the law, the same is left to be decided by the court below, giving opportunity to petitioner/wife to make cross-examination of P.W.1, so that veracity and authenticity of evidence, marked as exhibits may be testified, in vide evidence on 6th February, 2021.

There is specific observation made by the court below in the order impugned to the effect **“Mere exhibiting of any document does not establish its admissibility and proof. The admissibility of the documents tendered in evidence today shall be subjected to the order of the Court as per Order 18 Rule 4 of C.P.C., after cross-examination of P.W.1.”**

Therefore, the opportunity to cross-examine the P.W.1 has already been provided with, and if P.W.1 is subjected to cross-examination, the veracity of the

documents tendered in evidence on 6th February, 2021 may be best testified.

The revisional application, is, this disposed of providing to petitioner liberty to cross-examine the witness (P.W.1) for challenging the authenticity and veracity of the documents, tendered on 6th February, 2021 in accordance with the law, on the date to be suitably fixed by the learned court below, upon receipt of communication of this order, by the learned advocate for the petitioner, within ten (10) days from hence.

Petitioner/wife is further given liberty to file application afresh with a prayer for exempting the petitioner from paying the costs, as ordered on 6th February, 2021, and if any such application is filed after making cross-examination of P.W.1, the same shall be duly considered in accordance with the provisions of the law, if necessary to the extent of recalling the order dated 2nd March, 2021, upon invocation of power available under Section 151 C.P.C.

With this direction and observation, revisional application stands disposed of.

Connected CAN applications, if any, stand disposed of.

Learned court below is required to ensure expeditious disposal of the pending suit, providing sufficient opportunity of hearing to either of the parties

to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)