

FAT 187 of 2019
with
I.A No. CAN 1 of 2019 (Old No. 4093 of 2019)

Smt. Shipra Kumari (Agarwal)
Vs.
Sumit Agarwal

Mr. Saptarshi Dutt
Ms. Arpita Saha
Ms. Arkita Ghosh
.... For the Appellant

Mr. Kaushik Chatterjee
Mr. Krishnendu Paul Chowdhury
.... For the Respondent

The appeal has arisen out of an order dated 19th January, 2019 passed by the learned Additional District Judge, Fast Track, 2nd Court, Sealdah in Matrimonial Suit No. 326 of 2018. The respondent/husband has filed the suit for dissolution of marriage by praying for a decree of divorce. The suit was filed on 17th September, 2018.

The trial court recorded that in spite of service of summons, the wife/appellant did not appear and file any written statement to contest the suit. On 29th November, 2018 by order no. 3 the suit was directed to be heard ex parte. Accordingly, the suit appeared. The impugned judgment records that the husband/respondent exhibited three documents and adduced evidence to establish his case that he was subjected to cruelty by the wife. The learned trial judge on the basis of unchallenged testimony of the husband decreed the suit. The suit was decreed on the ground of cruelty and desertion.

Learned counsel appearing for the appellant/wife submits that although the records

show that the summons of the suit was served upon the wife, the wife has not received the summons and she became aware of the suit only when the decree was passed.

However, having regard to the fact that delicate issues involved in the matrimonial suit and the respondent/husband has agreed that the suit may be heard on contest, we set aside the impugned decree and direct the learned Additional District Judge, Fast Track, 2nd Court, Sealdah, to hear the suit from the stage of evidence of the wife.

The appellant/wife shall file written statement within two weeks from date. In default, this order shall stand recalled and the impugned judgment shall stand revived.

The learned trial judge shall give direction, which shall be peremptory in nature with regard to the procedural matter and both the parties shall abide by such direction.

Consequent upon filing the written statement and framing of issues, if required, the respondent shall be entitled to adduce further evidence and he shall be cross-examined by the appellant/wife. Thereafter, the evidence on examination and cross-examination of the wife's witness shall start. The evidence of the husband is already on record shall remain and the wife shall be at liberty to cross-examine the husband/respondent in relation to any other evidence that the respondent/husband may desire before the cross-examination of the wife.

The documents already marked as exhibits in the trial court shall remain on record.

The learned Additional District Judge, Fast Track Court-II, Sealdah is requested to dispose of the matrimonial suit as expeditiously as possible

preferably within a period of one year from the date of filing of the written statement.

In view of the above, FAT 187 of 2019 is disposed of.

In view of disposal of the appeal, CAN 1 of 2019 is accordingly disposed of.

Let a copy of this order be communicated to the learned Additional District Judge, Fast Track Court-II, Sealdah for information and doing the needful through learned Registrar Administration (L & OM).

(Ajoy Kumar Mukherjee,J.)

(Soumen Sen, J.)

