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C.O. 1351 of 2022

Smt. Putul Dutta (Banerjee)
Vs
Koushik Banerjee

Mr. Supratick Shyamal,
Mr. Dilip Kumar Shyamal,
... For the petitioner.

The subject matter of challenge in this revisional application is against the rejection of a prayer challenging the maintainability of a suit. The opposite party has filed the suit in the Court below being Title Suit No. 190 of 2018 before learned Civil Judge (Junior Division), 1st Additional Court, Diamond Harbour, against the petitioner praying for declaration that the marriage held between the parties be declared to be a nullity and inoperative also.

The petitioner/wife entered appearance in such suit, and has been contesting the same by filing written statement. There is a specific averment disclosed in the written statement that there has been a marriage duly solemnized between the parties, according to Special Marriage Act followed by registration of such marriage.

Mr. Supratick Shyamal, learned advocate appearing for the petitioner upon referring aforesaid facts contends that the Court below ought to have framed a preliminary issue touching the maintainability

of the suit, and then disposed of the same holding the suit to be not maintainable.

It is contended that in a proceeding instituted by the wife under Section 125 Cr.P.C., the petitioner/wife has already favoured with maintenance, wherein there has been a prima facie findings reached by the Court below describing the petitioner to be a legally wedded wife of opposite party.

It is thus further contended that the decision reached by the Court below rejecting the maintainability issue is erroneous and the pending suit should not be allowed to be proceeded further.

Having considered the submission made by the learned advocate for the petitioner, it appears that the petitioner/wife has some documents to challenge the proposed declaration, made by the opposite party in Title Suit No. 190 of 2018.

Upon perusal of the impugned order, it appears that the issue raised pertaining to the maintainability of the suit may be best decided upon holding a trial.

In that view of the matter, holding of trial appears to be inevitable. When petitioner/wife has sufficient documents to repudiate the proposed declaration of opposite party, made in Title Suit No. 190 of 2018, the same may be adduced at the time of trial.

The impugned order being supported by reasons does not call for any interference.

However, liberty is given to the petitioner to raise all such points and adduce all relevant documents in terms of his defence set up in written statement at the time of trial.

This would not, however, prevent the Court below to frame a specific issue pertaining to the maintainability of the suit.

The points so raised may once again be agitated pertaining to the maintainability of the suit at the time of final disposal of the suit.

Petitioner is directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite party and the opposite party.

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

The logical conclusion of the suit may be reached in a faster mode without granting unnecessary adjournment, unless it is extremely needed

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)