

Item No.06.
28.11.2022
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Ct..652

C.O. 1622 of 2021
With
CAN 1 of 2022

Ratan Kundu
versus
Paramita Dutta

Mr. Indrajit Mondal
...for the petitioner

Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Suhrid Sur
..for the opposite party

Being aggrieved and dissatisfied with the order No.25 dated 18th June, 2021 passed by the learned Additional District Judge, Fast Track, 3rd Court, Malda in Matrimonial Suit No.107 of 2019 the present revisional application has been preferred.

By the order impugned the learned trial Court rejected the plaintiff's prayer for dismissal of the said matrimonial suit being not maintainable. The petitioner contended that the petitioner and the opposite party were married before the Marriage Registrar under the provision of Special Marriage Act. Subsequently, on 01.09.2011 the wife/opposite party herein filed the Matrimonial Suit No. 360 of 2011 against the present petitioner/husband

for a decree of divorce but the said suit was dismissed as withdrawn on 06.12.2012. Subsequently, the husband/petitioner filed a Matrimonial Suit being No.414 of 2011 with a prayer for restitution of conjugal rights against the opposite party and he obtained an ex parte decree in the said suit on 18.04.2013. The opposite party /wife again filed a Matrimonial Suit No. 38 of 2013 against the petitioner/husband for a declaration that marriage between the parties is a nullity but the said suit was also dismissed on 05.05.2015 on contest. Against the said order of dismissal the wife/opposite party preferred F.A No.241 of 2015 before this Court but the said appeal was also dismissed for non-prosecution. Thereafter the opposite party/wife again filed a Matrimonial Suit being No.357 of 2016 against the petitioner/husband for dissolution of marriage and the said suit was dismissed as withdrawn on 07.04.2018. Subsequently, the wife /opposite party without prior liberty from the learned trial Court again filed the present Matrimonial Suit No.107 of 2019 against the petitioner/husband for dissolution of marriage which is pending for disposal. In the said

matrimonial suit, the petitioner/husband filed an application praying for dismissal of the suit being not maintainable for non-compliance of the Order 23 Rule 1 sub-Rule 4(b) of the code of civil procedure.

Mr. Mondal appearing on behalf of the petitioner submits that since no leave has been taken at the time of withdrawal of the suit so the opposite party/wife had no right to initiate the present matrimonial proceeding against the husband/petitioner. Accordingly, it is liable to be dismissed.

Mr. Mukherjee, learned senior advocate appearing on behalf of the wife/opposite party submits that earlier two suits namely Matrimonial Suit No.360 of 2011 and Matrimonial Suit No.357 of 2016 were dismissed for withdrawal but in those two suits the petitioner has not prayed for dissolution of marriage on the ground of desertion. Accordingly Mr. Mukherjee contended that present Matrimonial Suit being Mat Suit No. 107/2019 has been filed on different cause of action and on different ground in addition to earlier grounds.

Having considered the facts and circumstances of the case it appears that Mat Suit 360/2011 was filed on the basis of cause of action which arose on 16.02.2010, when the opposite party//wife had been allegedly driven. Later matrimonial suit i.e. Mat Suit 357 of 2016 was filed on the basis of cause action that arose on 14.12.2009 , 18.04.2013, 18.04.2014, 05.05.2015 and on different dates on which cruelty was allegedly perpetrated upon opposite party /wife, which was continuing till filing of that suit. Present suit namely mat suit 107/2019 filed on the basis of cause of action that arose earlier and in addition to that wife/opposite party stated in her plaint that cause of action of present suit also arose on 16.02.2010, the date on which the husband had driven out the wife and deserted the petitioner from her matrimonial house and society without any reasonable excuse which is still continuing and lastly on 21.10.2018 when the husband refused to settle the disputes amicably. When cause of action is of continuing and recurring nature, the subsequent matrimonial suit for divorce does not attract section 23(1) (4) (b) of the code. A

spouse who had withdrawn suit, may be, without taking liberty to file afresh is not precluded from suing again for dissolution if it involves continuing and recurrent cause of action. In a matrimonial dispute the cause of action can arise again and again and also can be continuing. Accordingly , I find that the present suit has been filed on a separate continuing cause of action and as such the rigour of Order 23 Rule 1 sub-Rule (4b) of the code does not attract in the present context.

In view of the same, I do not find any reason to interfere with the ultimate finding of the Court below.

C.O. 1622 of 2021 is accordingly **dismissed**.

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

(**Ajoy Kumar Mukherjee, J.**)