

S/L 64
06.12.2022
Court. No. 12
Suwayan

**CO 1860 of 2022
With
IA No: CAN 1 of 2022
(Application not here)**

**Smt. Gopa Sengupta (nee Das)
Vs.
Sri Shankha Sengupta & Ors.**

Mr. Sounak Bhattacharyya

...for the petitioner.

*Ms. Shohini Chakraborty
Ms. Prajaaini Das*

...for the caveator/opposite party.

Learned Advocate for the petitioner and the learned Advocate for the opposite party are present.

In the instant revisional application as filed under Article 227 of the Constitution of India the petitioner/wife has challenged the legality and veracity of the Order No. 32 dated 07.05.2022 as passed in Misc. Case No. 241 of 2021 arising out of Matrimonial Suit No. 2280 of 2019 as passed by learned Additional District Judge, 13th Court, Alipore, District – South 24 Parganas.

By the impugned order learned Trial Court struck out the defence of the present petitioner/wife for non-filing of her affidavit of asset in view of the mandate of the reported decision (2021) 2 SCC 324 (Rajnish Vs. neha & Anr.) as passed by the Hon'ble Apex Court while disposing of Criminal Appeal No. 730 of 2020 on 04.11.2020.

In support of the instant revisional application learned Advocate for petitioner/wife at the outset draws

attention of this Court to the impugned order. Attention of this Court is also drawn to the petition for striking out the defence as filed by the present respondent No.1/husband before the learned Trial Court and the copy of the written objection as filed by the present petitioner/wife as against the said petition before the Trial Court. It is submitted that while passing the impugned order learned Trial Court misconstrued the mandate of the Hon'ble Apex court as passed in the case of Rajnesh (Supra) and, thus, unnecessarily strike out the defence of the present petitioner without visualizing the predicament of the petitioner/wife in filing her affidavit of asset before the learned Trial Court. It is contended further that the learned Trial Court while passing the impugned order also failed to appreciate that at the material time the learned Advocate for the present petitioner/wife was suffering from COVID-19 which is why the affidavit of asset could not be filed by her within the specified time. It is, thus, submitted this is a fit case for setting aside the impugned order by allowing the instant revisional application.

While opposing the contention of the learned Advocate for the petitioner/wife, learned Advocate for respondent No. 1/husband also draws attention of this Court to the impugned order. It is contended by her that learned Trial Court while passing the impugned order rightly noticed that there were intentional laches on the part of the petitioner/wife in filing her affidavit of asset.

It is also submitted that in the impugned order learned Trial Court has elaborately discussed the ill conduct of the petitioner/wife only with the intention to drag the proceeding. It is, thus, submitted that the present revisional application may be rejected.

This Court has meticulously gone through the impugned order as passed by the learned Trial Court. This court has also perused the opposite party No. 1/husband's application for striking out the defence of the present petitioner as filed before the learned Trial Court as well as the written objection as filed by the petitioner/wife before the learned Trial Court. This Court has given its anxious consideration over the submissions of learned Advocates for both sides.

On perusal of the certified copy of the impugned order it reveals to this Court that there is no doubt that while passing the impugned order learned Trial Court has correctly observed that in spite of getting several opportunities since the date of her appearance in the said suit, the petitioner/wife for some reason or order did not file her affidavit of asset. Admittedly learned conducting Advocate for the present petitioner/wife before the learned Trial Court was suffering from COVID-19 but learned Trial Court has rightly observed that the delay occurred in between 01.03.2022 and 06.04.2022 remain unexplained. However, keeping in mind the spirit of the aforesaid reported judgment of Rajnesh (Supra), this Court considers that justice would be sub-served if the present petitioner/wife is granted an opportunity to file

her affidavit as to asset within a shortest specified date, however, subject to certain terms.

In view of such, the instant revisional application is allowed. The impugned Order No. 32 dated 07.05.2022 as passed in Misc. Case No. 241 of 2021 arising out of Matrimonial Suit No. 2280 of 2019 as passed by learned Additional District Judge, 13th Court, Alipore is hereby set aside.

Consequently, the petition for striking out the defence of the present petitioner/wife stands hereby rejected on contest. The present petitioner/wife is hereby directed to file her affidavit as to asset within seven days from the date of passing of this order and she is further directed to pay cost of Rs. 15,000/- out of which Rs. 7,500/- is to be paid to the opposite party No. 1/husband and the remaining of Rs. 7,500/- is to be paid with Secretary District Legal Service Authority, South 24 Parganas. It is further ordered that the cost as imposed by this Court shall also have to be paid within six days from the date of passing of this order and the receipt showing payment of such cost shall have be filed along with a list of document before the learned Trial Court within seven days from the date of passing of this order. It is further directed that learned Trial Court shall not accept the affidavit of asset of the present petitioner/wife unless the cost as directed is paid or deposited.

It is also made clear that in the event that the cost is not paid within the specified time or the affidavit of asset is not filed as directed by this Court within the time,

it will be presumed that no favourable order has been passed in this revisional application in favour of the present petitioner/wife.

Accordingly, CO 1860 of 2022 along with interim application CAN 1 of 2022 are disposed of.

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

(Partha Sarathi Sen, J.)