

31.10.2022
Item No.16
Ct. No.7
CHC
(disposed of)

C.O.2121 of 2022

**Smt. Poli Halder
Vs.
Sri Suman Sarkar**

Mr. Avinaba Patra,
Ms. Souraja De

...for the petitioner

Petitioner feels aggrieved with the order, dated 24th March, 2022, for extending the further opportunity to respondent in a case when the Matrimonial Suit has already been set for *ex parte* hearing.

It is submitted by the learned advocate for the petitioner that the Matrimonial Suit for divorce was filed on 20th June, 2020, and the court below was satisfied with the service report, as would be evident from the order, dated 4th February, 2021. Subsequently, matter has been set for *ex parte* hearing due to the non appearance of the opposite party/husband.

The only contention thus expressed by the learned advocate for the petitioner is that even after recording satisfaction by the court below regarding service of summons upon the opposite party, there is no justification of extending further opportunity to opposite party/husband, who voluntarily and

deliberately preferred to remain absent without doing response to the summons duly served upon him.

No other point is raised requiring address by this Court.

It is true that the court below recorded its satisfaction regarding service of summons upon the opposite party/husband by order dated 4th February, 2021. Subsequently, the suit has been fixed for *ex parte* hearing. It is at the stage of *ex parte* hearing, the court below preferred to give further opportunity to opposite party before taking up *ex parte* hearing.

No doubt, before recording *ex parte* evidence and to ensure *ex parte* hearing, the satisfaction of the court below has to be reached first regarding due service of summons upon the opposite party, and his deliberate absence to take part in the proceeding, at the same time. Such discretion has to be exercised reasonably and most judicially. This cannot be expected that the proceeding should be continued in an endless manner, simply for extending opportunity to opposite party/husband in a suit for divorce already instituted by the wife in the year 2020. Therefore, a cheque and balance has to be ensured by the court below, while extending further opportunity to opposite party, for not responding to summons. When the court below has already extended opportunity opposite party/husband to secure his presence in the pending proceedings, this

Court should not disturb the same, and dispose of the instant revisional application with the observation made hereinbelow.

The court below is thus requested to dispose of the Matrimonial Suit in accordance with the law, after adhering to the stages available under Order 5 of the Code of Civil Procedure with utmost expedition, so that there will be no hardship or inconvenience caused to the petitioner. The logical conclusion of the Mat Suit thus may be reached after adhering to the stages available under Order 5 C.P.C., expeditiously as possible preferably within March, 2023.

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

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

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.)