

Item 2. 13-07-2022

FAT 236 of 2021
CAN 1 of 2021
CAN 2 of 2021

^{sg} Ct. 8

Krishna Biswas
Versus
Gurubar Biswas

Mr. Budhadeb Ghosal, Adv.
Mr. Chandrachur Chatterjee, Adv.
Mr. Aditi Kumar, Adv.
...for the appellant

Mr. Deepak Prahladka, Adv.
...for the respondent

By consent of the parties, the appeal and the applications are taken up together and disposed of by this common order.

The appellant filed a suit for divorce. The said suit was decreed ex parte on the basis of an application filed by the husband/respondent on 28th August, 2006 in which the husband, in his written statement, has consented to the grant of divorce in favour of the wife. The suit was pending since 2004. The record of the proceeding would show that the appellant had kept this matter pending for a considerable period of time and there was inaction on her part to pursue the suit.

The learned Judge exasperated with the conduct of the appellant, ultimately disposed of the suit ex-parte on the basis of the admission made by the husband in his written statement.

It is elementary that the ground for divorce has to be proved in a Court of law. It cannot be granted on the basis of a consent given by the husband unless there is an application for mutual divorce filed by the parties on an understanding that the matter is

likely to be settled and the wife would agree to a mutual divorce. We directed the husband to pay a sum of Rs.8,00,000/-. The husband duly paid a sum of Rs.8,00,000/- as per our order dated 9th February, 2022 and it was directed to treat the said amount as permanent alimony subject to further hearing to the parties on the said aspect of the matter.

However, the learned Counsel for the wife has submitted that the amount is inadequate and in any event the suit is required to be heard as there has been no adjudication of the dispute between the parties.

The stand of the appellant is unclear. On the one hand, she prayed for divorce and on the other, she had taken completely different stand in the ground for appeal that she wants to lead the conjugal life. She did not take any step for withdrawal of the suit. However, on the ground that the learned Trial Judge could not have decreed the suit on the basis of the consent given by the husband unless the proceeding is converted to the proceeding for mutual divorce, the decree is set aside.

The appellant is personally present in Court and has given an undertaking to refund the said amount to the husband in course of this week by an account payee cheque, which on presentation shall be honoured.

Since the suit is pending for a considerable period of time, we direct the learned District Judge to assign the suit to the learned Additional District Judge, Alipore. The assignee court shall dispose of the suit within a period of one year from the date of assignment by the learned District Judge, Alipore.

The learned Registrar Administration (L&OM) is directed to

immediately communicate this order to the learned Additional District Court for compliance.

We are not deciding the issue of *alimony pendenti lite*. The learned Trial Judge may decide the said matter in accordance with law. However, precedence should have given to the early disposal of the suit and we make it clear that no adjournment shall be granted to either of the parties on the date fixed unless there is a compelling reason for granting such adjournment.

The aforesaid directions are peremptory.

With the above directions, the appeal and the connected applications are, accordingly, disposed of.

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

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)