

21.01.2022  
Ct. 21  
D/L 19  
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**C.O. 1998 of 2021**  
**(Via Video Conference)**

**Chitra Adhikari Shroff**  
**-Vs-**  
**Gautam Shroff @ Gautam Roy Govind Shroff**

Saptansu Basu,  
Sukanta Chakrabarty,  
Anindya Halder,

... for the petitioner

Surajit Mitra

....for the opposite party

The petitioner Chitra Adhikari Shroff being aggrieved by the inordinate delay of her application under Section 36 of the Special Marriage Act, 1954 filed in Matrimonial Suit No. 24 of 2014 for dissolution of marriage filed by the opposite party and pending before the Additional District Judge, 14<sup>th</sup> Court, Alipore, South 24 Parganas, has preferred this application under Section 227 of the Constitution of India praying that necessary direction may be given to learned trial court for disposal of her application under Section 36 of the Special Marriage Act, 1954 and registered as Misc. Case No. 19 of 2014.

Perused the record and materials therein. From the copy of orders passed by the Hon'ble High Court in

C.O. No. 1849 of 2016 on 20.05.2016, in C.O. No. 799 of 2018 on 20.07.2018, on 08.02.2019 in C.O. No. 2659 of 2019 on 04.11.2019 in C.O. No. 286 of 2021 on 12.02.2021 and in C.O. No. 529 of 2021 on 05.03.2021, it is seen all those applications under Article 227 of the Constitution of India except C.O. No. 799 of 2018 and C.O. No. 286 of 2021 were filed by the wife petitioner praying for expeditious disposal of her Misc. Case under Section 36 of the Special Marriage Act.

The Hon'ble Coordinate bench of the High Court vide order dated 20.05.2016 directed Additional District Judge, 5<sup>th</sup> Court, Alipore to dispose of the application under Section 36 of the Special Marriage Act preferably within a period of four months from 21<sup>st</sup> May, 2016 without granting any adjournment to either of the parties.

Another Hon'ble Coordinate bench of the High Court once again while disposing the C.o. No. 799 of 2018 filed by the opposite party/husband on 20.07.2018 directed Additional District Judge, 14<sup>th</sup> Court, Alipore to dispose of the Misc. Case No. 19 of 2014 at a very early date without granting any further adjournment and if possible subject of availability of the witness, the matter should be dispose of on day to day hearing and directed the husband to pay sum of rupees 3 lakhs in three installments to be made within two months and subject to the adjustments against the

amount of maintenance to be ultimately granted by the learned Court below. Once again the Hon'ble High Court in C.O. No. 799 of 2018 vide order dated 08.02.2019 directed this time Additional District Judge, 11<sup>th</sup> Court, Alipore, where the case has been transferred to dispose of the Misc. Case without granting unnecessary adjournment to either of the parties.

From the order dated 04.11.2019 passed in C.O. No. 2659 of 2019, it is seen once again the wife petitioner has moved the Hon'ble High Court for expeditious disposal of her Misc. Case under Section 36 of the Special Marriage Act, and Hon'ble Co-ordinate bench directed the Court below to dispose of the Misc. Case under Section 36 of the Special Marriage Act, within a period of four weeks from the date of communication of the order without entertaining any prayer for adjournment and further directing the learned Court below to treat the time limit fixed for disposal to be preemptory and mandatory.

The order dated 12.02.2021 passed in C.O. No.286 of 2021 show the petitioner/wife has once again moved the Hon'ble High Court praying for expeditious disposal of her Misc. Case and at that time the examination in chief of the petitioner was already started and she has already exhibited 58 documents and learned Court below was hearing the case by fixing successive dates in short intervals. However, the

Coordinate bench directed the learned Court below complete the cross examination of P.W. 1 within two days by taking the hearing on day to day basis. That if the Misc. Case is not disposed of within the time fixed by the Court the petitioner shall be at liberty to renew the prayer for interim maintenance.

The Court below in compliance of the above direction of the Hon'ble High Court in different C.Os. was pleased to close the cross examination of the petitioner without giving any opportunity to the husband to cross examine the wife on those 58 documents produced and exhibited by her. Being aggrieved by such order the husband has filed C.O. No. 529 of 2021. Such C.O. was allowed on 05.03.2021 and where the learned court below was directed to allow five days time to the opposite party/husband to cross examine the petitioner/wife and complete the cross examination within five consecutive days allowing at least two hours time to the husband to cross examine the wife. And directed to dispose of the Misc. Case within two months. Subsequently, the husband has filed CAN 1 of 21 for modification of the above order seeking more time to cross examine the wife and which the Hon'ble Coordinate bench was pleased to reject the same.

From the contents of the order passed by different coordinate bench of this Court in different applications

under Article 227 of the Constitution of India, it is seen the husband has filed Matrimonial Suit in the year 2014 for dissolution of marriage and wife has filed an application under Section 36 of Special Marriage Act, seeking pendent lite alimony in the year 2014 itself. She was granted interim maintenance of rupees ten thousand per month and a lump sum amount of rupees three lakhs subject to adjustment against the maintenance amount to be paid ultimately.

That even after lapse of seven years the application under Section 36 of the Special Marriage Act, is still pending and could not be disposed of even after several directions for expeditious disposal being passed by the different coordinate bench of the Hon'ble High Court. At present the case is in the stage of recording of evidence from the side of the opposite party/husband.

It is worth to note here the case in question which was initially pending before the 5<sup>th</sup> Additional District Judge, Alipore was later transferred to the Court of 14<sup>th</sup> Additional District Judge and lastly in the Court of 11<sup>th</sup> Additional District Judge. Since the lower Court record is not with this Court and as such it is not possible to ascertain due to whose prayers such frequent transfer of the case was made from one bench to another bench. Here, this Court is of view such frequent transfer of case from one bench to another may be one of the cause

for delay in disposal of the case. So, here the parties to the suit cannot put blame exclusively upon the trial Court for delay.

On perusal of the order sheets of the lower Court it is seen on several occasions the case was adjourned on the prayer of the parties to the proceedings and after March 2020 due to covid pandemic hearing could not be done. The petitioner who have produced and exhibited 58 documents cannot expect the cross examination to be completed within a day or two as the Court cannot fix the matter of the petitioner alone for whole day. In court's diary several cases of different natures are fixed in a day proceeding and dates are posted in advance. It is not practicable as well as possible for a court to dedicate a day exclusively for hearing the case of the petitioner and whose case does not appear to be an exclusive case of special nature involving interest of the entire society. I find the petitioner by filling one application after another applications under Article 227 of the Constitution not only misused the process of the Court but also wanted to create and put some kind of pressure upon the learned Court below, when she herself does not appear to be diligent in appearing before the Court below for her cross examination.

The learned Court below who is bound to comply the order of the Hon'ble High Court to save itself from

contempt has expressed its despair in the order sheets how it is not possible on the part of the Court to fix the case of the petitioner alone and complete the evidence within the time stipulated by the Hon'ble Court. Normally a Court of Additional District and Sessions Judge dedicate its first half of sitting for hearing sessions and criminal matters and where the evidence of several witnesses have to be recorded, examination of accused persons under Section 313 of Cr.P.C. have to be recorded, charge need to be framed in sessions cases, hearing of criminal revisions application and criminal appeals need to be taken up. The second half of the sitting is exclusively fixed for civil matters. The present case being civil matter it is normally taken up during the second half of the day. Sometimes the Additional District and Sessions Judge has to take up bail file of the Sessions Judge during the absence of the Sessions Judge or if the Sessions Judge remains engaged in administration work of the District. The Judges also need time to write orders and judgements. Sometimes no judicial work can be taken up due to different types of resolution filed by the Bar.

Therefore, this court is of view that in spite of several directions passed by the different coordinate bench of the High Court in different C.Os. since 2016 till 2021, the learned court below could not keep the directions in view of the difficulties which an Additional

District and Sessions Judge has to face in running its court and discussed above. More so, when the petitioner herself is not diligent in putting her appearance for her examination and cross examination.

However, from the order sheets it is seen the case is fixed for further examination of the opposite party/husband. Therefore, the learned Court below is directed to see the Misc. Case No. 19 of 2014 is disposed of at the earliest without granting a single adjournment to the parties for whatsoever reason.

Accordingly, C.O. No. 1998 of 2021 is disposed of.

Interim order, if any, stands discharged.

There will be no order as to cost.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Kesang Doma Bhutia, J.)**