

07.02.2022
Sl. No.11
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPA 18984 of 2021

Smt. Ira Chattopadhyay (nee Das)
Vs.
The Oriental Insurance Company Limited & Ors.

Mr. Dwaipayan Banerjee,
Mr. Abir Das
.....for the petitioner.

Mr. Ranjay De,
Mr. Basabjit Banerjee
.....for the respondent nos.1 & 2.

Ms. Supriya Dubey,
Mr. Debolina Chakraborty
.....for IRDA.

Mr. Swapan Banerjee,
Mr. Kunal Ganguli,
Mr. Tirupati Mukherjee
.....for the respondent nos.5 & 6.

The petitioner claims to be the wife of Subir Kumar Chattopadhyay, a former employee of the Oriental Insurance Company Limited, respondent no.1. It appears from the document produced by the Oriental Insurance Company Limited that in the service book, the employee had nominated one Saptaparni Chattopadhyay. In the said declaration, the employee has stated that Saptaparni is his daughter. The petitioner had also declared himself to be a widower and such declarations were given on 28th December, 2017. As per the declaration as on

28th december, 2017, the age of Saptaparni was about 14 years. Initially Saptaparni was not a party.

Considering that Saptaparni was a minor in 2017, this Court directed the petitioner to add Saptaparni Chattopadhyay and her guardian, Anita Chakraborty as parties to the writ petition. The petitioner has added Saptaparni Chattopadhyay and Anita Chakraborty as respondent nos.5 and 6. The said added respondent nos.5 and 6 are represented. The petitioner is required to establish the validity of her marriage before a competent court of law prior to ventilating her grievances relating to non-payment of family pension to the petitioner.

The issue, regarding the entitlement of family pension and retiral benefits of a deceased employee vis-à-vis his first and second wife, has been considered in a recent judgment of this Court delivered on 22nd December, 2021 in WPA 15977 of 2021 (Chayna Saha @ Saha Chayna Vs. The State of West Bengal & Ors.). In that case, the parties were relegated before a competent forum for establishing the validity of marriage.

In the instant case, from declaration given by the petitioner, it appears that he was married and his wife appears had passed for which the petitioner has declared himself to a widower on 28th December,

2017. Saptaparni Chattopadhyay may be the daughter born out of the wedlock between the petitioner with his deceased wife. Although there is nothing on record from either side, but it may be so that Subir Kumar Chattopadhyay since deceased had married the petitioner after the death of his first wife. The validity of petitioner's marriage is very much dependent as to whether the petitioner was at all married to Subir Kumar Chattopadhyay, and if so, when did the marriage take place, i.e., before the death or after the death of the other wife of Subir Kumar Chattopadhyay. The petitioner, however, claims that Saptaparni Chattopadhyay is the adopted child of Subir Kumar Chattopadhyay.

On behalf of the added respondent nos.5 and 6, it is submitted that Saptaparni Chattopadhyay is now a major. The date of birth of Saptaparni as per the Aadhar Card is 24th February, 2004, and as such she is few days short of attaining 18 years of age as on date. The photocopy of the Aadhar Card and the PAN Card made over to Court is retained with the record.

These factual issues as regards the validity of marriage cannot be gone into by a writ Court.

In the aforesaid facts and circumstances, the petitioner is directed to approach the competent civil court by making Saptaparni Chattopadhyay and the

Oriental Insurance Company Limited as parties to such proceeding.

Apart from the service of summons as required after filing of a case before a competent civil court, the petitioner, on institution of a case before the competent court, shall inform Saptaparni Chattopadhyay and the Oriental Insurance Company Limited within 7 days therefrom with the number and particulars of the case that may be instituted.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of along with the connected application without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)