

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.O. 2987 of 2019

With

I.A No. CAN 1 of 2022

Sri Krishnendu Roy

Vs

Smt. Pritisha Bhowmik

For the Petitioner : Mr. Soumya Dasgupta, Advocate
Mr. Somnath Banerjee, Advocate

For the Opposite Party : Shyamal Kr. Das, Advocate
Mr. Ajay Barman Roy, Advocate

Heard on : August 12, 2022

Judgment on : August 18, 2022

Bibhas Ranjan De, J.

1. This is an application under Article 227 of the Constitution of India challenging the Order no 13 dated 01.08.2019 passed by

Ld. Additional District Judge, 1st Court no.3, Barrackpore, in connection with Mat Suit No. 19 of 2016.

2. Ld. Advocate on behalf of the petitioner/husband has contended that the order impugned suffers from material irregularity in not allowing the application dated 24.09.2018 with a prayer for reconciliation/mediation which is a mandatory step to be taken in a Mat Suit for nullity under the Special Marriage Act. It has been further submitted on behalf of the petitioner, in the alternative, that, the suit was filed on the ground of practicing fraud but there is no specific averments in the suit. It has been further submitted that purpose of marriage is to enable a couple to settled down in life and live peacefully. Therefore, a step for reconciliation may be a mandatory step in Mat Suit. Accordingly, learned advocate on behalf of the petitioner prays for setting aside the order impugned.

3. Per contra, ld. Advocate appearing on behalf of the opposite party/ wife has submitted that prayer for reconciliation in a suit for nullity of marriage on the ground of practicing fraud is absolutely unnecessary. It has been submitted that the marriage between the parties has not yet been consummated between the parties and more over marriage was solemnized by

practicing fraud at the instance of petitioner/husband. Thereby, ld. Advocate on behalf of the opposite party /wife sought for rejection of the instant application under Action 227 of the Constitution of India.

4. On perusal of the impugned order no. 13 dated 01.08.2019 passed by Ld. Additional District judge I find that this suit was filed at the behest of opposite party/wife for nullity of marriage on the ground that the marriage solemnized between the parties has not been consummated due to the willful refusal of the petitioner/husband to consummate the marriage and/or her consent was obtained to the marriage by practicing fraud and petitioner/husband in his written statement denied the allegations.
5. Learned Judge disposed of three (3) applications viz. application seeking permission to file additional written statement, application with a prayer for recalling the Order dated 03.02.2018 whereby learned judge refused an application under Order VII Rule 11 of the Civil Procedure Code and an application dated 24.09.2018 with a prayer for referring the suit for reconciliation/mediation between the parties.

6. Ld. Judge allowed the first application permitting the petitioner husband to file additional written statement. Ld. Judge rejected the prayer for recalling the Order dated 03.02.2018 whereby learned Judge refused an application under Order VII Rule 11 of Civil Procedure Code filed on behalf of the petitioner/husband. Lastly, Ld. Judge refused the application dated 24.09.2018 filed on behalf of the petitioner/husband for referring the suit for reconciliation/ mediation between the parties on the ground of strong opposition by the opposite party/ wife and also on the ground of nature relief sought for in the suit.
7. At the time of hearing both the ld. Advocates appearing on behalf of the parties emphasized on the issue of reconciliation only which was dealt with by the Learned Judge at the time of considering an application dated 24.09.2018
8. Before going into the merit of this application it would be appropriate to lay out Section 34 of the Special Marriage Act, 1954 and also Section 23 of the Hindu Marriage Act, 1955 respectively as follows:

“Section 34. Duty of court in passing decrees.—

(1) In any proceeding under Chapter V or Chapter VI, whether defended or not, if the court is satisfied that,—

(a) any of the grounds for granting relief exists; and

(b) 1[where the petition is founded on the ground specified in clause (a) of sub-section (1) of section 27, the petitioner has not in any manner been accessory to or connived at or condoned the act of sexual intercourse referred to therein], or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and

(c) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and

(d) the petition is not presented or prosecuted in collusion with the respondent; and

(e) there has not been any unnecessary or improper delay in instituting the proceedings; and

(f) there is no other legal ground why the relief should not be granted; then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act it shall be the duty of the

court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

2[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (c), clause (e), clause (f), clause (g) and clause (h) of sub-section (1) of section 27.] 2[(3)

For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) *In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]*

23 Decree in proceedings .

(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that

(a) any of the grounds for granting relief exists and the petitioner⁴⁷ [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

*(b) where the ground of the petition is the ground specified⁴⁸ [***] in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and*

⁴⁹ [(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]

(c) ⁵⁰ [the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:⁵¹

[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

⁵² ***[(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected***

and the court shall in disposing of the proceeding have due regard to the report.]

⁵² [(4) *In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]*

9. Therefore, intention of the legislature is to take an effort for reunion of married couple before passing any decree of divorce or that of nullity of marriage. That is why, provision for reconciliation has been provided in both the Act of 1954 & 1955. This being the position and also considering the grounds of the Mat suit being no. 19 of 2016 I am of the view that Learned Judge should take an effort for reconciliation between the parties to the suit before proceeding further in the Mat suit no. 19 of 2016.

10. Thereby, observation of the Learned Trial Judge in respect of application dated 24.09.2018 **on the issue of reconciliation**, stand set aside with a request to take an effort for reconciliation by fixing a date therefor.

11. I do not find any reason to interfere with the other observation relating to issue of application under Order VII Rule 11 of the

Civil Procedure Code, which has to be adjudicated by taking evidence at the time of trial.

- 12.** For reasons, the C.O No. 2987 of 2019 along with CAN No. 1 of 2022 stand disposed of.
- 13.** As this suit is pending since 2016, Ld. Judge is requested to dispose of the suit as expeditiously as possible.
- 14.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 15.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]