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Ct. 18
18.04.2022

C.O. No. 4059 of 2019

Sri Chanchal Chakraborty
Vs.
Smt. Hena Chakraborty

Mr. Amitabha Ghosh,
Sk. Sujauddin,
Ms. Nabanita Chatterjee ... For the petitioner.

Mr. Debasish Mallick Choudhury,
Ms. S. Mukherjee,
Mr. Sandip Singh ... For the opposite party.

The revisional application under Article 227 of the Constitution of India is directed against Order No. 18, dated September 20, 2019 passed by the learned Additional District Judge, Fast Track Court – 3 at Barrackpore, District – 24 Parganas (North) in Misc. Case No. 03 of 2016 arising out of Matrimonial Suit No. 201 of 2013.

The said matrimonial suit was decreed ex-parte. The wife/opposite party, the respondent of the said matrimonial suit filed an application under Order IX Rule 13 of the Code of Civil Procedure for setting aside of the said ex-parte decree.

The said application has been registered as Misc. Case No. 03 of 2016 before the learned Trial Judge. The miscellaneous case was filed out of time, as such accompanied with an application for condonation of delay.

September 20, 2019 was a date fixed for recording of evidence of the opposite party in the said miscellaneous case.

The petitioner on the said date refused to cross-examine the said witness on the ground that the miscellaneous case cannot be proceeded without disposing the application for condonation of delay.

The learned Trial Judge by the order impugned being the Order No. 18 dated September 20, 2019 overruled the said objection of the petitioner and closed the evidence of the opposite party.

Learned counsel for the opposite party fairly concedes that the miscellaneous case was filed out of time and an application for condonation of delay in filing the said miscellaneous case is pending disposal.

The prayer of the petitioner for disposal of the application for condonation of delay first before any further proceeding of the said miscellaneous is not unjustified, the order impugned, therefore, is not sustainable and is accordingly set aside.

The learned Trial Judge is requested to dispose of the said application for condonation of delay first and thereafter, depending upon the outcome of the said application, shall proceed to dispose of the said miscellaneous case from the stage at which it has already reached.

C.O. 4059 of 2019 is allowed with the above terms without any order as to costs.

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

(Biswajit Basu, J.)