

20.12.2022
Item No.22
Ct. No.7
CHC
(disposed of)

C.O. 3604 of 2022

Mitali Deb
Vs.
Nirupam Das

Mr. Sounak Bhattacharya,
Mr. Sumitava Chakraborty,
Mr. Abhirup Halder

...for the petitioner

Mr. Rwitendra Banerjee,
Mr. Sourav Basu,
Mr. Shibasis Chatterjee

...for the Caveator/
opposite party

While assailing the impugned order dated 9th September, 2022, Mr. Sounak Bhattacharya, learned advocate appearing for the petitioner/wife submits that upon visualization of a petition filed under Section 24 of the Hindu Marriage Act, praying for *alimony pendente lite*, there should not be any insistence upon the wife for filing written statement incurring necessary expenses for the purpose.

Mr. Bhattacharya further submits that Mat. Suit should not be allowed to be proceeded *ex parte*, even in absence of the written statement being filed by the wife, taking into account the pendency of an application under Section 24 of the Hindu Marriage Act filed by the wife.

Reliance is placed by Mr. Bhattacharya on a decision reported in **2018 (3) CHN (CAL) 497** delivered in the case of ***Sunil Bansal vs. Meeta Bansal*** to submit that without making provision for necessary expenses of the proceedings, it would be impracticable to insist upon the defending spouse even to file written statement.

While making elaboration of such issue Mr. Bhattacharya submits that unless the application made under Section 24 of the Hindu Marriage Act is decided in accordance with law, the court below ought not to have endeavoured exercise in return its logical conclusion of the Matrimonial Suit, though already set for *ex parte* hearing due to non filing of written statement.

Per contra, Mr. Rwintendra Banerjee, learned appearing for the opposite party/husband disputes with the submission advanced by Mr. Bhattacharya replying to the effect that the original Mat Suit praying for divorce filed by the husband may not be allowed to be proceeded in an endless manner, giving a go by to the provisions of Order 8 Rule 1 C.P.C., merely upon visualization of a petition filed under Section 24 of the Hindu Marriage Act by the wife herself.

It is thus contended by Mr. Banerjee that when the petitioner/wife chooses not to file written statement giving no regard to the provisions of Order 8 Rule 1 C.P.C., the *ex parte* hearing of the suit may be allowed to be taken place, even in presence of an application under Section 24 of the Hindu Marriage Act.

Having considered the submission of both sides, it appears that it is no longer *res integra* that application praying for *alimony pendente lite* should be disposed of with utmost expedition providing an opportunity of hearing to fighting couple.

The litigation cost is a significant component within the meaning of *alimony pendente lite*, so as to set up defence properly upon incurring incidental expenses for the purpose.

When it is the specific submission disclosed by the petitioner that in the absence of litigation cost being granted, it would be quite impracticable to insist upon the defending spouse to file written statement, the court below should proceed to decide the petition praying for *alimony pendente lite* with utmost expedition, before venturing upon returning decision in connection with the *ex parte* hearing of the suit already set by the court below.

It is not the case of the petitioner, presented by the wife that she is not willing to contest the case upon filing written statement, but it is for the financial distress, allegedly suffered by the petitioner/wife, the written statement could not be filed earlier, doing adherence to Order 8 Rule 1 C.P.C.

No further elaboration in context with the point raised is necessary.

The revisional application is disposed of upon setting aside the impugned order dated 9th September, 2022, passed in Misc. Case No.04 of 2022, arising out of Matrimonial Suit No.972 of 2022 of learned Additional District Judge, Fast Track Court-II, Barrackpore, North 24 Parganas, with a direction upon the court below to hear out the petition praying for *alimony pendente lite* with utmost expedition without granting unnecessary adjournment, subject to the suitability and convenience of the court below, providing sufficient opportunity of hearing to either of the parties to this case, preferably before the end of April, 2023.

After the decision is returned by the court below in connection with prayer for alimony matters the logical conclusion of the suit may be reached in accordance with provisions of law.

In the meantime *ex parte* hearing of the suit including the argument may not be pursued till the decision of the Misc. Case praying for *alimony pendente lite* under Section 24 of the Hindu Marriage Act.

With this observation/direction, the revisional application stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)