

03 22.02.2023

Ct-08

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FA 58 of 2020
with
I.A No. CAN 1 of 2020
CAN 2 of 2022
CAN 3 of 2022

Shri Arnab Mukherjee
Vs.
Smt. Rikhia Mukherjee @ Rekhia Mukherjee & Anr.

Mr. Sourav Sen
... For the Appellant

Mr. Soumen Das
... For the Respondents

The parties are present in court today.

The following order is dictated in presence of the parties along with their learned advocates.

The appeal and the applications for additional evidence are heard together and disposed of by this common order.

The appellant filed the suit for divorce on the ground of cruelty, desertion and adultery under Section 27(1) of the Special Marriage Act. The suit was decreed on the ground of cruelty and desertion under Section 27(1b) and (1d) of the Special Marriage Act. The plaintiff could not prove the adultery. Learned Additional District Judge, 1st Court at Barasat, North 24 Parganas while disposing of the suit has allowed maintenance @Rs.8,000/- per month for the minor daughter under Section 38 of the Special Marriage Act and Rs.8,000/- per month towards the alimony for the opposite party no. 1/wife.

In this appeal it is alleged that there are sufficient material to prove the adultery. The appeal is filed against the findings recorded by the learned Additional District Judge that the

adultery could not be proved.

It is submitted that although decree for divorce was granted, the entitlement of the wife to receive maintenance would depend upon a finding with regard to the adultery. There is also no discussion in the impugned judgment and decree with regard to the basis of quantification of the maintenance in favour of the wife.

Consequent upon filing of the application for additional evidence, we directed the respondent/wife to file an affidavit stating whether she has remarried or not. The wife has candidly disclosed the factum of her remarriage after the judgment and decree dated 17th August, 2019 and she also stated that she had begotten a male child from the second marriage. She also disclosed the name of her present husband and stated that she could not have claimed any maintenance under any description from her first husband.

In view of the subsequent marriage of the respondent/wife, she is not entitled to maintenance. Accordingly, the decree directing payment of maintenance Rs. 8,000/- per month towards the opposite party no. 1/wife is set aside. However, the maintenance payable to the female child is affirmed.

On such consideration, the appeal succeeds in part.

In view of disposal of the appeal, all connected applications are also disposed of.

There shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)

