

Item No. 14
19.06.2023
Court. No. 19
GB

C.O. 631 of 2023

Sri Debasish Paul
Vs.
Smt. Papri Paul

Mr. Apurba Kumar Ghosh

...for the Petitioner.

The Matrimonial Suit No.1101 of 2015 pending before the learned Additional District Judge, 3rd Court at Howrah has been proceeding ex parte and has been fixed for ex parte arguments. The respondent/wife did not file any written statement. No evidence was adduced by the wife. No cross-examination was held and the suit is continuing ex parte. Upon detection of a mistake in the caption and in the body of the application for divorce, the petitioner wanted to change the expression 'suit for divorce under Section 27 of the Special Marriage Act, 1954' to 'an application for divorce under Section 13 of the Hindu Marriage Act, 1955'.

The learned advocate for the petitioner submits that it was miscommunication between the client and the learned advocate conducting the matter in the learned court below and hence, inadvertently the expression 'Special Marriage Act' has gone down in the body of the plaint although the marriage certificate would indicate that marriage was solemnized under the Hindu Marriage Act.

Having gone through the amendment application it appears to this Court that the schedule of amendment only mentions correction in the caption and not in the body. The

body of the application in various places and in the prayer portion mentions that the marriage was solemnized under the Special Marriage Act and a prayer has also been made for dissolution of marriage solemnized under the Special Marriage Act.

Under such circumstances, this Court is of the view that the learned court below did not err in rejecting the application, as the correction of the caption or nomenclature of the application would not change the pleadings which were already on record and which were not sought to be amended by inclusion of specific pleading in the schedule.

Under such circumstances no relief can be granted to the petitioner.

The revisional application is dismissed.

However, the petitioner is at liberty to proceed before the learned court below in this regard strictly in accordance with law. If the petitioner approaches the learned court below with a proper application, the learned court below shall decide the same in accordance with law and upon allowing an opportunity to the wife to contest the suit.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)