

12.10.2023
Sl. No.9(DL)
srm

C.O. No. 841 of 2021
Kaushik Bagchi
Versus
Piya Bagchi (Chowdhury)

Mr. Probal Kumar Mukherjee,
Mr. Suhrid Sur

...for the Petitioner.

The revisional arises out of an order dated January 29, 2021 passed by the learned Additional District Judge, Fast Track (4th Court) at Barrackpore, North 24-Parganas, in Matrimonial Suit No.561 of 2018. By the order impugned, the learned court below rejected the application of the petitioner seeking paternity test (DNA) of the child.

According to Mr. Mukherjee, learned Senior Advocate appearing on behalf of the petitioner/husband, the averments in the plaint would indicate that the child was born on the expiry of 264 days. Mr. Mukherjee submits that the averments of the wife with regard to the date of inception of pregnancy, the day when she last cohabited with the husband and the day when the child was born, suffer from several discrepancies and missing links. On such ground, a test of the paternity of child would be necessary. Reliance has been placed on Section

112 of the Evidence Act. It is submitted that the petitioner should not be saddled with the responsibility of being a father to a child whose paternity is in dispute and such dispute has been raised by the petitioner on the averments of the mother.

In my opinion, the paternity of the child is a non-issue in the suit. The suit has been filed by the wife for divorce on the ground of mental and physical cruelty and desertion. The learned court below has already disposed of the application for maintenance upon allowing Rs.4,000/- to the wife and Rs.5,000/- as litigation cost. Thus, the child is not in the picture at all. The Court cannot allow DNA test as a matter of course. The right to privacy, dignity and factum of paternity of the child should be protected and respected. The contentions of the petitioner in the proceeding are open to cross-examination by the husband and he can cross-examine her on every point including the contentions which have been raised in the application.

The revisional application is disposed of.

The question of paternity is not gone into in this proceeding as it is neither a relevant fact nor a fact in issue.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)