

August 21, 2023
Sl. No.01
Court No.19
s.biswas

CO 1432 of 2022

Suman Das
vs.
Chaitali Das (Dutta)

Mr. Lalratan Mandal

... for the petitioner

Mr. Pinaki Datta

Ms. Jayashree Saha

... for the opposite party

In this revisional application, the orders dated September 15, 2021 and April 27, 2022 are under challenge. The said order was passed by the learned Additional District Judge, 4th Court, Barasat, District North 24 Parganas.

By the order impugned, the application of the husband for recalling of the order dated September 15, 2021 was set aside. By the order dated September 15, 2021, an application filed by the wife in Matrimonial Suit No.825 of 2017, was allowed ex parte. It is the contention of the petitioner that the learned advocate had asked the petitioner not to attend the court as the Bar had taken a resolution that no adverse orders should be passed on that day. Due to the resolution, the matter was not likely to be taken up.

However, on September 15, 2021, the learned court below took up the application under Section 24 of the Hindu Marriage Act filed by the wife and disposed of the same, directing the husband to pay a sum of Rs.18,000/- per month as maintenance

pendente lite, from June 2018, till the disposal of the suit. The husband was further directed to pay the litigation cost of Rs.10,000/-. The learned court below recorded that the learned advocate for the husband did not take any steps and the husband was absent. Thus, the matter was taken up and disposed of.

It appears from the order impugned, that on the day the matter was disposed of, the local Bar had taken a resolution not to pass any adverse orders. Hence, learned advocate had intimated the petitioner that he was not required to attend the court on the day fixed for hearing of the application under Section 24 of the Hindu Marriage Act.

Thus, Mr. Mandal, learned advocate for the petitioner, submits that the order dated September 15, 2021, should be recalled.

Upon perusal of the record and upon hearing both the parties, the learned court below came to the conclusion that several dates were fixed for hearing of the application under Section 24 of the Hindu Marriage Act, but the husband did not take steps. The matter was fixed on February 25, 2021. The husband had taken an adjournment. The adjournment was allowed as a last chance, fixing April 6, 2021 for hearing. On April 6, 2021, the husband was present before the court and filed

hajira, but the learned advocate was not present. On the next date, neither the husband nor the learned advocate were present and the matter was disposed of.

This court finds the conduct of the husband was not above board. It could be that he may have been misled by the learned advocate with regard to the attendance on September 15, 2021. Yet there have been instances where the husband had taken adjournments and the court had fixed the matter as a last chance. Thus, the husband is required to compensate the wife by paying costs. An application for maintenance pendente lite has to be decided on the basis of the evidence on record with regard to the income of the husband, the status of the husband, the living condition of the wife, their assets etc. Such issues have to be decided on contested hearing.

Thus, this court is of this view that the order dated September 15, 2021 deserves to be set aside. The husband shall pay cost of Rs.30,000/- to the wife for the multiple adjournments taken and for failure to attend the court on the dates fixed. The order dated September 15, 2021 and April 27, 2022 are set aside. The application under Section 24 of the Hindu Marriage Act, filed by the wife in

Matrimonial Suit No.825 of 2017, will be heard afresh.

Learned advocate for the wife requests the court to take cognisance of the fact that the application had been pending since 2018 and on numerous occasions, the court had allowed adjournment as a last chance. The husband did not take the opportunity, but allowed the matter to be heard ex parte.

This court fixes the time limit for completion of the hearing of the said application upon evidence being recorded, within two months from the date of communication of this order. Although, the court cannot be blamed due to the conduct of the husband. However, as the Bar had taken a resolution to the effect that no adverse order should be passed on that day for the ends of justice, one last chance should be given to the husband. The cost shall be paid within two weeks from date, in cash through the learned advocate on record in the learned court below or before this court engaged by the wife. A receipt shall be given by the wife upon receiving the amount. The learned court below shall fix the dates for evidence and hearing, upon being satisfied that the cost has been paid.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)