

25.09.2023
Sl. No.7(DL)
srm

C.O. No. 1812 of 2023

**Rupam Baidya
Vs
Sri Barun Baidya**

Mr. Siddhartha Banerjee,
Mr. Abhisek Baran Das
...for the Petitioner/Wife.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Mrs. Kaustav Bhattacharya
...for the Opposite Party/Husband.

The revisional application has been filed challenging an order dated April 5, 2023 passed by the learned Additional District Judge, North 24-Parganas at Barasat, in Mat Case No.2234 of 2018.

By the order impugned, the learned court below rejected an application filed by the wife/petitioner dated April 13, 2023, wherein a prayer was made for marking photocopies of two documents (two letters dated March 7, 2013 and September 29, 2015) as exhibits. According to the learned court below, the law was well settled that a photocopy could not be filed in evidence unless the same was tendered by following the provisions of Sections 65 and 66 of the Indian Evidence Act, 1872. The learned court below found that the husband was not

confronted with the question as to whether the original of the two letters were in his possession or not. Thus, relying on the decisions of the Calcutta High Court and the Hon'ble Apex Court, the learned court below did not allow the documents to be marked as exhibits.

Mr. Banerjee, learned Advocate appearing on behalf of the wife/petitioner submits that the learned court below ought to have marked the photocopies of the letters as exhibits and the probative value of the same could be decided at the time of hearing of the suit. Reliance has been placed on several decisions of the Hon'ble Apex Court.

Mr. Mukherjee, learned Advocate appearing on behalf of the husband/opposite party, vehemently opposes the contention of Mr. Banerjee. Learned Advocate submits, that the law is well settled that photocopies of the letters could only be marked as exhibits, if they were tendered in accordance with law and as per the procedure laid down in the Evidence Act.

Reliance has been placed on the following decisions:

1. U. Sree vs. U. Srinivas reported in (2013) 2 SCC 114;
2. Nityananda Roy vs. Rashvehari Roy reported in 1952 SCC OnLine Cal 19.

According to Mr. Mukherjee, the petitioner ought to have given reasons as to why, such secondary evidence was sought to be tendered. The reasons why the original was not in her custody, should have been pleaded. The husband ought to have been confronted with the photocopies of the said documents and then those documents were to be tendered in evidence by following the process laid down in the Evidence Act. When the entire process was not complied with, the learned court below rightly rejected the application.

In the application filed by the petitioner, no such averment has been made disclosing the reasons why those letters were relevant for the purpose of adjudication of the suit and why those letters should go in evidence. Why the original was not in the custody of the petitioner has not been averred.

This Court is of the view that the law does not prevent marking of photo copies of documents. The law allows photocopies to be marked as exhibits, upon compliance of the procedure laid down in the Evidence Act. Moreover, the foundation as to why the photocopies of the two letters were relevant, had not been pleaded in the application.

Under such circumstances, the order impugned does not call for any interference. Prima facie, it appears that the wife has filed a counterclaim for restitution of conjugal rights. The

letters which she had written to her husband could be relevant for complete adjudication of the proceeding, subject to the satisfaction of the learned court below. Thus, an opportunity should be given to the wife, to file a detailed application with reasons. The foundation as to why the letters were relevant for adjudication of the suit, should be laid. Once such application is filed, the learned court below shall proceed in accordance with law and mark the documents as exhibits, in the event the petitioner follows the procedure laid down by law. However, if the learned court below finds that the letters were totally irrelevant, then an order shall be passed with specific reasons as to why the learned court had arrived as such conclusion.

The revisional application is, thus, disposed of.

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.)