

11.08.2023
Court No. 19
Item No.04
CP

C.O. 3399 of 2022
Soumika Chakravorty
Vs.
Aniket Ganguly

Mr. Supratik Basu

...for the petitioner.

The revisional application has been filed by the wife, challenging an order dated May 5, 2022, passed by the learned Additional District Judge, 4th Court, Barasat, in Matrimonial Suit No. 1912 of 2016. By the order impugned, the learned court below rejected an application under Order 23 Rule 1 of the Code of Civil Procedure filed by the petitioner.

The wife had filed a suit for dissolution of marriage on the ground of the marriage being a nullity and the husband had filed a counter claim for dissolution of marriage as per the provisions of the Hindu Marriage Act. When the suit had progressed to a considerable extent, the application for withdrawal of the suit with liberty to file afresh was not allowed. The learned court, upon considering the entire application, did not find any cogent reason to arrive at a conclusion that the suit would fail by reason of a formal defect or there was sufficient ground to allow the petitioner/wife to file a fresh suit on the self-

same cause of action. It has been recorded that there is an application pending for passing of a judgment on admission. It has also been recorded by the learned court that the suit could be disposed of on the basis of Order 8 Rule 6A of the Code.

Thus allowing the wife to withdraw the suit with liberty to file afresh would prejudice the husband. The learned court also found that just a single sentence indicating that the learned advocate had not drafted the petition properly, would not be sufficient ground to allow the petitioner to withdraw the suit and file a fresh suit, on the self-same cause of action.

I do not find any illegality in the order impugned as the application for withdrawal does not disclose any reason at all.

The plaintiff can at all times abandon her claim but the counter claim has to proceed. However, the right to withdraw and opportunity to file afresh on the self-same cause of action can only be given when there is a formal defect in the suit, for which the suit may fail or there are other sufficient grounds to allow withdrawal with opportunity to file afresh. These two ingredients not having been satisfied, the learned court below rightly did not exercise discretion in the matter.

The revisional application is dismissed.

It appears that trial has not commenced. Hence, the factual inconsistencies or defects which the petitioner is aggrieved of, can always be amended as per the settled principles of law. However, this order should not be construed as a direction upon the learned court below to allow an amendment. If any such application is filed later, the same shall be disposed of independently and strictly in accordance with law and upon allowing the husband to contest the same.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)