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C.O. 3497 of 2022

**Gunjan Shah
Vs
Pramod Nawalgaria & Ors**

Mr. Indranil Nandi,
Ms. Shreya Agarwal,

... For the petitioner.

Mr. Pratip Mukherjee,
Mr. Amarnath Agarwal,

... For the opposite parties.

While assailing the impugned order dated 5th November, 2022 passed in Misc. (ACT VIII) Case No. 118 of 2019, Mr. Indranil Nandi, learned advocate appearing for the petitioner/husband submits that the Court has erroneously rejected the application observing, inter alia that there is no need of adducing evidence by the parties to this case for the determination of the issue involved in Act VIII proceedings vide Misc Case No. 118 of 2019.

Admittedly, the petitioner/husband has been favoured with an order from the Apex Court by Special Leave Petition (Civil) No. 4369 of 2021 directing the Court below to ensure expeditious disposal of the case within six months. Such order is passed by the Apex Court on 7th July, 2021. To ensure expeditious disposal of the case, petitioner/husband furnished his affidavit-in-chief, but the petitioner, according to Mr. Nandi, could not be allowed to adduce his evidence on

the simple score that it might cause delay to the disposal of this case. The controversy raised in the Act VIII proceeding may be best decided upon collecting evidence, Mr. Nandi argues.

Per contra, Mr. Pratip Mukherjee, learned advocate appearing for the opposite parties submits that the pending proceeding may not be allowed to be continued in an endless manner, taking a plea of adducing evidence, and if such evidence is allowed to be adduced in an indefinite manner, the spirit and message of the order passed by the Apex Court in the above referred Special Leave Petition will be frustrated.

It is thus proposed by Mr. Mukherjee that the pending Act VIII proceeding should be disposed of with utmost expedition.

Having considered the submissions of both sides, it appears that there is already a direction passed by the Apex Court in Special Leave Petition to ensure expeditious disposal of the pending Act VIII case proceedings mentioned hereinabove.

When petitioner/husband wants to adduce evidence to establish his case, that should not be discouraged, provided a chance of cross-examination is given to the other side to controvert the same, but that exercise in the name of adducing evidence should not allowed to be continued in an endless manner without any check.

No further elaboration is felt necessary.

The revisional application stands disposed of upon setting aside the impugned order with a direction upon the Court below to permit petitioner/husband to adduce evidence, both oral and documentary, within seven days from the date of communication of this order to the learned Court below, and the cross-examination of the plaintiff's/petitioner's witnesses, to be examined, may be undertaken on consecutive dates, giving a chance of cross-examination of such witnesses to the opposite parties.

The logical conclusion of Act VIII proceedings may be endeavoured to be reached with utmost expedition, upon sensing the message already conveyed in Special Leave Petition (Civil) No. 4369 of 2021.

Mr. Nandi further assures this Court that the petitioner will cooperate with the Court to ensure expeditious disposal upon tendering his witnesses on the date, to be scheduled by the Court below.

This would not, however, prevent the Court below to pre-pone the date, if necessary, upon notice to both the parties.

Pendency of this Act VIII proceedings will not, however, prevent the parties to explore the possibility of settlement, if any between them.

Parties to make communication of the order to

the court below.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)