

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

C.O. 3626 of 2022

Sayonee Sil

VERSUS

Abhishek Sil

For the petitioner:

Mr. Partha Pratim Roy, Adv.

Mr. Chiranjib Sinha, Adv.

For the opposite party:

Mr. Dyutiman Banejee, Adv.

Mr. Aniruddha Chatterjee, Adv.

Mr. Prabhakar Chowdhury, Adv.

Ms. Arunima Lala, Adv.

Judgment on: May 19, 2023

Biswaroop Chowdhury, J:

The petitioner before this Court is a wife in a proceedings of maintenance under the Special Marriage Act 1956 and is aggrieved by the Orders dated 19-11-2022 and 23-11-2022 passed by Learned Additional District Judge Tenth Court at Alipore in Matrimonial Suit No – 16 of 2012.

The grievance of the petitioner in the instant application is that the Learned Trial Court erred in not disposing the application filed by the petitioner on 19-11-2022 required for proper adjudication of the application for maintenance. On 19-11-2022 the petitioner filed an application for a direction upon the opposite party to file an affidavit of asset complying the direction as set out by the Hon'ble Supreme Court in Criminal Appeal No. 730 of 2020. By Order dated 19.11.2022 Learned Trial Court was pleased to fixed 23-11-2022 the next date for filing Supplementary documents and hearing of the application filed by the petitioner. On 21-11-2022 the opposite party filed a supplementary affidavit regarding affidavit of asset, and on 23-11-2022 Learned Trial Court was pleased to accept the supplementary affidavit.

It is the contention of the petitioner that the Learned Trial Court erred in accepting the Supplementary affidavit filed by the opposite party although it was not according to the direction as set out by the Hon'ble Supreme Court of India.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party. Perused the petition filed and materials on record. Learned Advocate for the petitioner submits that the Learned Trial Court erred in accepting the supplementary affidavit which was not in accordance with the direction as set out by the Hon'ble Supreme Court. Learned Advocate further submits that the said affidavit ought not to have been accepted.

Learned Advocate for the opposite party submits that his client has furnished the documents required under law. Learned Advocate draws attention to para 2 and 3, of the supplementary Affidavit filed in Court below and submits that the said paragraphs will show that the relevant particulars are furnished as claimed by the petitioner.

Upon hearing the Learned Advocate and upon considering the facts of the case this Court is of the view that as there is no observation by the Learned Trial Court in the Order dated 23/11/2022 as to whether the Affidavit submitted by the opposite party is according to the law laid down by the Supreme Court regarding affidavit of assets the matter should be remitted back to the Learned Trial Court for reconsideration.

Thus the matter is remitted to Trial Court for consideration Learned Trial Court shall prior to the evidence of opposite party scrutinize and decide as to whether the Affidavit of Assets including Supplementary Affidavit submitted by opposite party complies the direction of the Hon'ble Supreme Court passed in Criminal Appeal No. 730 of 2020. In the event it complies the said direction the opposite party will be permitted to adduce evidence. In case it does not comply the directions of the Hon'ble Supreme Court necessary order may be passed by Learned Trial Court. As submitted by Learned Advocate for the petitioner that Examination in Chief of petitioner witness is closed and the petitioner is unable to exhibit some documents liberty is given to the petitioner to apply for

recalling the witness for further examination which may be considered by Learned Trial Court in accordance with law.

This Revisional Application stands disposed.

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

(Biswaroop Chowdhury, J.)