

Ct. No. 652
23.8
2023
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C.O. 4009 of 2017
Prasun Roy
-Versus-
Smt. Rupanjana Roy nee Nath

Mr. Sounak Bhattacharyya
Mr. Sounak Mondal ...For the Petitioner

Mr. Mit Guha Roy
Mr. Sayan Kanjilal ...For the Opposite Party

Being aggrieved by and dis-satisfied with the order dated 7th September, 2017 passed by the learned Additional District Judge, Fast Track Court No. 2 at Barasat in Matrimonial Suit No. 90 of 2015, present application under Article 227 of the Constitution of India has been preferred.

The petitioner's case is that the opposite party herein filed an application under Section 27 of the Special Marriage Act, 1954, inter alia, praying for dissolution of marriage between the parties by a decree of divorce. During pendency of the suit the opposite party herein filed an application under Section 36 of the Special Marriage Act, inter alia, praying for an order directing the husband/petitioner herein to pay a sum of Rs. 15,000/- per month towards maintenance of the wife and Rs. 20,000/- as litigation cost.

Learned Trial Court by an order dated 23rd September, 2016 was pleased to allow the application filed by the wife/opposite party herein in part and was pleased to direct to pay Rs. 10,000/- per month for the maintenance of the wife within 10th of each succeeding month and also directed to pay litigation cost of Rs. 10,000/- to the wife / opposite party herein.

The petitioner herein by filing an application under

Section 151 of the Code of Civil Procedure prayed before the Court that two term deposits may be withdrawn along with accumulated interest and to return the balance amount to the petitioner after deducting the total arrear alimony. The wife opposite party contested the said application dated 2nd March, 2017 by filing written objection, denying all material allegations contained therein. Learned Trial Judge by an order being No. 19 dated 7th September, 2017 was pleased to reject both the petitions dated 9th January, 2017 and 2nd March, 2017 by which husband petitioner sought for time to pay arrear alimony and adjustment of arrear maintenance amount with fixed deposits amount respectively.

Being aggrieved by and dissatisfied with the order, the petitioner herein submits that the petitioner has met road accident and was hospitalized and the learned Trial Judge did not consider the precarious condition of the petitioner and passed the impugned order illegally and with material irregularity. The Court below in exercise of its jurisdiction was not proper and justified by drawing an adverse inference against the petitioner for not furnishing any document to show that the amount of Rs. 2,50,000/- is still lying with the bank and accordingly the petitioner prayed for setting aside the order impugned.

Mr. Mit Guha Roy, learned Counsel appearing on behalf of the opposite party submits that the said amount has already been withdrawn by wife / opposite party herein from the bank and said Fixed Deposits are absolute '*stridhan property*' of the opposite party herein / wife and is not liable to be adjusted with the arrear maintenance amount. Accordingly, he submits that the order impugned does not call for any interference.

I have considered the submissions made by the learned Counsel appearing on behalf of both the parties. On perusal of the order impugned it appears that the wife / opposite party argued before the Court below that the amount of money involved in two fixed deposit certificate, whether absolute *stridhan* property or not requires full-fledged hearing. It further appears that Court below accepted said contention and held such issue cannot be decided at this stage without full-fledged hearing. The matrimonial suit is pending for a long time and both parties submitted that it is required to be disposed of at the earliest.

In such view of the matter C.O. 4009 of 2017 is hereby disposed of with a direction upon the Court below to make every endeavour for disposal of the said matrimonial suit preferably within a period of six months from the date of communication of this order.

It is made clear that the claim of wife / opposite party that the amount involved in the fixed deposit certificates are her absolute *stridhan* property, which admittedly requires full-fledged hearing, such issue shall be kept open for decision at the time of final adjudication of the suit by the Court below and for this purpose, if required the Court below will be at liberty to frame additional issue on that point.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)