

May 16, 2024
Sl. No.A 144
Court No.19
s.biswas/srm

CO 62 of 2024

Somaditya Banerjee
vs.
Agnijia Ganguly (nee) Banerjee

Mr. Aniruddha Chatterjee
Mr. Abir Lal Chatterjee

... for the petitioner

1. The revisional application arises out of an order dated August 16, 2023 passed by the learned Additional Additional District Judge, 6th Court at Alipre, South 24 Parganas, in Mat. Suit No.1549 of 2022.
2. By the order impugned, the learned court allowed the wife to cross-examine the husband and adduce evidence as DW. The learned court was of the view that the litigant should not suffer for the fault of the learned advocate.
3. Mr. Chatterjee, learned advocate for the petitioner, submits that in the application under Section 151 of the Code of Civil Procedure by which the wife prayed for recall of the husband for cross-examination, the ground taken was not the fault of the learned advocate. Such reason which was assigned by the learned court was imaginary and illusory. The records would reveal that the wife had declined to cross-examine the husband and also did not want to depose.

4. It appears that the husband relied on an earlier statement made by the wife that she wanted a divorce. Thus, according to Mr. Chatterjee, when both the parties wanted divorced, there was no reason why elaborate evidence should continue, causing waste of judicial time.
5. It is further contended that the matter had gone on for a long time and the application was filed as a dilatory tactic.
6. It appears from the records that on July 4, 2023, the learned advocate for the wife had declined to cross-examine the PW1 and accordingly the case was fixed for ex parte argument. When the cross-examination had been declined, the husband had urged before the court to reject the application filed by the wife as no further opportunity should be granted to her.
7. The learned court was of the view that the law required that every matter should be adjudicated as far as practicable, in the presence of the interested parties and upon consideration of relevant evidence. On such ground, the learned court allowed the application filed by the wife, by giving an opportunity to the wife to cross-examine the petitioner/PW1 and also adduce her own evidence. The order was passed in order to do substantial justice.

This is a matrimonial suit and during the course of adjudication of such a suit, emotions of the parties run high. Thus, even if the wife at one time had made certain statements and had declined to cross-examine the PW1 or adduce evidence as DW, the learned court rightly observed that the sanctity of law would require that such kind of litigations should be adjudicated upon allowing adequate and reasonable opportunity to the adversaries to contest the proceedings.

This Court does not find any reason to interfere with the order impugned. Even if Mr. Chatterjee's contention is accepted, that the wife was blowing hot and cold, a court of law cannot ignore the pressure which the parties may have endured during the course of litigation.

Under such circumstances, the revisional application is disposed of without any interference.

If the petitioner requests the learned court for being permitted to depose virtually, the prayer shall be allowed. Necessary arrangements shall be made by the learned court in this regard, as it is the specific contention of the petitioner that he is working abroad.

It is made clear that the cross-examination of PW1 should be completed within three days, to be fixed by the learned court and the evidence of DW1/wife shall be completed within a week. The husband will be allowed to join virtually during the evidence of the wife. The time period fixed by this Court is peremptory, in view of the fact that the suit has been pending since long. The conduct of the wife has been somewhat erratic.

13. Accordingly, the revisional application stands disposed of.

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

(Shampa Sarkar, J.)