

08.02.2024
Court No. 19
Item No.17
Cp

C.O. No. 254 of 2022

Smt. Nirupama Biswas
Vs.
Dr. Dilip Kumar Biswas

Mr. Partha Chakraborty
Mr. J. Bhattacharya
Mrs. Poulomi Dutta
Mrs. Sharmistha China

.....for the petitioner.

Mr. Arijit Bardhan
Mr. Rishabh Dutta Gupta

....for the opposite party.

1. The revisional application arises out of an order dated November 18, 2021, passed by the learned Additional District Judge, 7th Court, Barasat. By the order impugned, the learned court rejected an application challenging the maintainability of the Matrimonial Suit No. 441 of 2018.
2. It is the specific contention of the wife that the suit was not maintainable as prayers for declaration that the marriage was a nullity and a prayer for divorce could not be made in the same suit. Relying on Civil Rules and Orders, it is submitted that the application must not contain more than one prayer. Series of alternative prayers of the same kind could not

be prayed for. Secondly, the application with regard to distinct subject matters would have to be filed separately. It is further contended that the prayer for declaration of the marriage to be a nullity in terms of Section 25 of the Special Marriage Act, 1954 (hereinafter referred to as 'the said Act'), was time barred. The said suit was filed five years after the marriage took place. The suit for annulment of the marriage ought to have been filed within a period of one year from the date of the marriage in terms of the proviso (b) to Section 25 of the said Act.

3. The learned court, relying upon the various decisions of the Hon'ble Apex Court came to the finding that the matrimonial suit with prayers for nullity as also for divorce were maintainable. Secondly, the court found that the application of fraud which was allegedly played upon the opposite party/husband by the petitioner was a mixed question of law and fact, and the limitation would be counted from the date of the knowledge.
4. Mr. Chakraborty, learned advocate appearing for the wife/petitioner, submits that the cause of action to file a suit under Section 25 of the Special Marriage Act and under Section 27 of

the said Act were different. Similar questions of law and facts do not arise before the court to adjudicate the reliefs. Thus, the learned court erred in holding that the issues were the same and the court could try both the issues in the said matrimonial suit. It is next contended that the issue as to maintainability of the relief as per Section 25 of the said Act should have been tried as a separate issue under Order 14 Rule 2 of the Code of Civil Procedure.

5. Mr. Bardhan, learned advocate appearing on behalf of the husband, submits that in the decision of Supriya Chakraborty (Nee Paramanik) vs. Champak Kumar Chakraborty, reported in AIR 2000 Cal 76, a coordinate Bench observed that amendment of the plaint in Matrimonial Suit No. 75 of 1993 by incorporating an additional ground and an alternative prayer for a decree of nullity was not erroneous. It was further held in the said suit that in a suit for divorce, an alternative prayer for nullity should be allowed by way of an amendment and, even if the said amendment was taken out after a few years from the date of marriage, the same should not be rejected at the stage of amendment on the

ground of limitation alone. The court held that the period of limitation would be counted in such circumstances when the right to sue under Section 25(1) of the Special Marriage Act accrued.

6. It is contended by Mr. Bardhan that the knowledge of fraud was acquired by him much after the marriage and, as such, such alternative prayer could not be rejected at the threshold as a preliminary issue while deciding an application challenging maintainability of the suit, and when the written statement had also not been filed. Another decision of the coordinate Bench in the matter of Aktar Khan vs. Sk. Rubaiya Yasmeen in C.O. 697 of 2017, was also relied upon, where an amendment in a pending divorce suit for annulment of the marriage was allowed.
7. Under such circumstances, this court does not accept Mr. Chakraborty's contention that the maintainability of the suit should have been decided as a preliminary issue. It is an admitted fact that at the relevant point of time, the written statement had not been filed. However, the learned court came to the finding that the question of maintainability of the

prayer for declaration that the marriage was a nullity and the point of limitation with regard to the prayer, would be decided on evidence.

8. Hence, the revisional application is disposed of without any interference with the order impugned.
9. It is intimated to the court that the written statement has been filed. Thus, the learned court shall frame the issues. First of such issues shall be with regard to the reliefs claimed in the suit with reference to Sections 24, 25 and 27 of the said Act. The point of limitation shall also be decided along with the maintainability issue. The other issues shall accordingly be disposed of in accordance with law, based on the outcome of the maintainability issue.
10. The revisional application is, thus, disposed of. There shall be no order as to costs.
11. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)