

March 6, 2024
Sl. No.7
Court No.19
s.biswas

CO 580 of 2023

Sourav Halder

vs.

Tania Halder (Mukherjee)

Mr. Dyutimoy Paul

Mr. S. Ghosh

... for the petitioner

Mr. Biswajit Hazra

Mr. Archisman Sain

Mr. Sk. Nadeem Ahmed

... for the opposite party

1. The order dated December 21, 2022 passed by the learned Additional District Judge, 2nd Court, Barrackpore, North 24 Parganas, in Matrimonial Suit No.618 of 2016, is under challenge in this revisional application. By the said order, the learned court stayed the matrimonial suit, till decision in the Matrimonial Suit No.78 of 2015. Matrimonial Suit No.78 of 2015 filed by the wife is pending before the learned Additional District Judge, 3rd Court at Barasat, North 24 Parganas and was at the stage of evidence, when the order impugned was passed.
2. It is pertinent to mention that due to passage of time, the argument of the opposite party/wife in Matrimonial Suit No.78 of 2015, was completed. The learned advocate for the husband/petitioner was unavailable due to illness and the argument on the part of the husband was closed. An application for recalling of the said order, is pending.

3. Matrimonial Suit No.618 of 2016 was fixed for delivery of judgment, but the court found that the suit should be stayed, as it was a later suit. The earlier suit MAT 78 of 2015, filed by the wife for declaration that the marriage was a nullity, was also at the stage of delivery of judgment. The court was of the view that the decision in the later suit would operate as res judicata in the earlier suit as same issues would be decided. Moreover, the issue of nullity raised by the wife would be rendered infructuous, if the suit for divorce was decided finally.
4. The issue of consummation of marriage was also a vital issue to be decided in the suit for divorce. The wife had raised a question of impotency and non-consummation of marriage both in the written statement filed in the divorce suit as also in the plaint in the suit filed for declaration that the marriage was a nullity.
5. Under such circumstances, by invocation of power under Section 10 of the Code of Civil Procedure, the learned court stayed the later suit till the decision in Matrimonial Suit 78 of 2015.
6. Mr. Paul, learned advocate for the petitioner/husband, submits that the suit for divorce is ready for judgment. At this stage, the court should not have stayed the proceedings

only on the ground that the issue of consummation of marriage was a vital issue and if the judgment was delivered, the earlier suit would become infructuous.

7. According to the learned advocate, even if the decree of divorce was passed and the marriage was declared to be a nullity thereafter, the judgments would operate in separate fields.
8. The learned advocate for the wife submits that the later suit should always be stayed if it was found by the court that a prior proceeding between the same parties, in respect of the same subject matter, was pending in another court or in the same court and the said court was capable of granting the reliefs claimed. Undoubtedly, the prior suit of 2015 filed by the wife for a decree of nullity of the marriage was pending before the competent court which was capable of granting the reliefs claimed.
9. It is also true that the decision in the subsequent suit if rendered earlier would be in conflict or may affect the merits of the prior suit. Some of the decisions arrived at may also operate as res judicata, even if the ultimate reliefs may not be same.
10. On perusal of the petition for divorce, it appears that the contention of the husband against the

wife was that she was an adulteress and had misappropriated his money. She refused to engage in physical relationship with the husband as she had a lover. In the written statement, the wife had categorically stated that the husband was impotent and the marriage was not consummated. For a declaration that marriage was a nullity, due to non-consummation of marriage, the prior suit i.e. Matrimonial Suit No. 78 of 2015 was filed by the wife. Thus, the issue of non-consummation of marriage is vital in both the matters. An issue can also be framed by the court at the final hearing but before delivery of judgment, if the court finds such issue to be relevant for adjudication of the dispute between the parties. The defence case was specific. On account of impotency of the husband, the marriage was not consummated.

11. In my view, justice would be subserved if both the suits are heard analogously. The evidence in both the suits are already on record. It appears that the husband's prayer for recalling of the order of closure of the argument in the Matrimonial Suit no.78 of 2015, is pending. The said application is allowed by this court. The husband shall be allowed to participate at the

hearing. The order of closure of evidence is recalled.

12. The learned District Judge, North 24 Parganas at Barasat shall transfer the Matrimonial Suit No.618 of 2016, which is pending before the learned Additional District Judge, 2nd Court at Barrackpore, to the court of the learned Additional District Judge, 3rd Court at Barasat, within a period of one month from date. Both the suits shall be heard analogously, from the stage of arguments. Both the parties will be entitled to advance arguments. The learned Additional District Judge, 3rd Court at Barasat, upon receipt of the records, shall issue notices to both the parties and the suits should be disposed of within a period of six months thereafter.
13. The revisional application is disposed of accordingly. The order impugned is modified.
14. All the parties are directed to act on the basis of the server copy of the order.
15. 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.)