

05.02.2024

Mithun

List – M/L

Sl. No. 98.

Ct. No. 652.

C.O.1105 of 2020

Sri Anupam Amaresh Sarkar

-Vs.-

Smt. W.S. Sowmita Sarkar nee Pal

Mr. Sovan Majumder,
Mr. Kunal Banerjee

...for the petitioner.

Mr. Suranjan Mandal,
Ms. Mousumi Biswas

...for opposite party.

This application under Section 227 of the Constitution of India has been preferred against an order No.8 dated 17.02.2020 passed by the learned Additional District Judge, 8th Court at Alipore in Matrimonial Execution case No.10 of 2018.

The petitioner herein got married with the opposite party under the Special Marriage Act, 1954 on 16th May, 2012. It is alleged by the petitioner that after eight months of their marriage, the opposite party deserted the petitioner and petitioner thereafter being advised by his learned Advocate, filed suit under Section 9 of the Hindu Marriage Act, 1955, inter alia, seeking decree for restitution of conjugal right. The wife/opposite party appeared in the said suit and filed an application under Section 24 of the Hindu Marriage Act before the learned Trial Court and the same was registered as Misc. Case No.9 of 2016. The Court below while disposing the said application, was pleased to direct the petitioner herein to pay a sum of Rs.10,000/- (Rupees Ten Thousand) only per month along with current alimony till the liquidation of the arrear amount of alimony from 25.04.2016 to 31.10.2017.

Being aggrieved by that order petitioner preferred an application before this Court. However, this Court

was pleased to dismiss the revisional application with liberty to the petitioner to approach before the Trial Court by filing appropriate application.

Petitioner further submits, in the meantime, opposite party filed aforesaid Matrimonial Execution Case No.10 of 2018 before the said Court for execution of the said order dated 08.11.2017. Petitioner submits that he has also filed another suit under section 13(i) (a) of the Hindu Marriage Act 1955 seeking divorce. Petitioner further submits that their marriage took place under the provision of Special Marriage Act but the maintenance pendent lite order was passed under section 24 of the Act of 1955.

Being aggrieved by the impugned order, the learned Counsel on behalf of the petitioner submits that the Trial Court grossly erred in law and in fact by passing the impugned order dated 17.02.2020 since it is already within court's knowledge that the marriage was between the parties registered under the provision of Special Marriage Act 1954 and, as such, no provision of Hindu Marriage Act 1955 shall have any application in deciding the cause of the petitioner.

He further submits Learned Trial Court miserably failed to consider that the petitioner was under legal misconception that the marriage between the petitioner and the opposite party herein was solemnized under Hindu Marriage Act but in fact, said marriage was registered under the provision of Special Marriage Act. Accordingly, learned Court below ought to have considered the application for adjournment filed by the petitioner on the ground stated in the petition and the order which was passed under a wrongful surmise or misconception, cannot be executed before the Court of Law, passed in connection with section 9, 24 and 13(i)

(a) of the Act of 1955. Accordingly, he has prayed for setting aside the order impugned.

Learned Counsel on behalf of the opposite party raised objection contending that this execution case has arisen out of opposite party's application filed due to non-payment of pendente lite maintenance and it is a separate Misc. Case and has got no connection with the original suit, which might have filed quoting wrong provision of law. Accordingly, he submits that the order impugned does not call for interference by this Court.

I have considered the submission made by both the parties.

The documents filed under Annexure-P2 shows that the marriage between the parties was registered under the Special Marriage Act. The provision laid down in Section 22 of the Special Marriage Act is *pari materia* with the provision laid down in Section 9 of the Hindu Marriage Act. The alimony pendente lite provision in Section 36 of the Special Marriage Act is also similar with that of the provision laid down in Section 24 of the Hindu Marriage Act.

In such view of the matter, the petitioner cannot take advantage of his misconception of law by filing the present application for setting aside the order of pendent lite maintenance which was passed by the Court below, considering the plight of the opposite party/wife.

Merely because a wrong provision of law is quoted by the parties in making application to the court, the legal right which the opposite party has under a *pari materia* provision cannot be ignored or denied. It is the business of the court to know the law and it is only incumbent upon the litigant to come before the court and state the fact in respect of which he seeks the

remedies. Here opposite party/wife hardly has any obligation to inform the court under which statute or provision of law she is entitled to get pendent lite maintenance. Here even if the wife has quoted a wrong statute seeking pendent lite maintenance, that is no way relieves the petitioner herein of the obligation of paying pendent lite maintenance already awarded by the court below. There is no law that a proper recitation of the appropriate section is must for the obtaining of a remedy of interim maintenance or litigation cost.

In fact, I do not find any substance in the present application.

C.O.1105 of 2020 is, accordingly, dismissed. However, the petitioner will be at liberty to seek for making prayer for appropriate amendment in the plaint under the provision of the law and the misquotation of section made by opposite party in her application seeking pendent lite maintenance shall be treated as redundant.

(Ajoy Kumar Mukherjee, J.)