

23.04.2024  
Court No. 19  
Item no.05  
CP

C.O. No. 961 of 2024

Smt. Sudesna Das

Vs.

Sri Partha Sarathi Banerjee

Mr. Indranil Nandi

Mr. Sayak Konar

.....for the petitioner.

1. The revisional application arises out of an order dated February 2, 2024 passed by the learned Additional District Judge, Fast Track Court, Chandannagar in Mat Suit No.265 of 2023. By the order impugned, the learned court rejected a joint application filed by the husband and the wife. According to the learned court, the joint petition under Section 151 of the Code of Civil Procedure was for a judgment on admission. A similar prayer under Order 12 Rule 6 of the Code of Civil Procedure was also made, which was earlier rejected by a predecessor judge.
2. It was observed by the court that the opposite party/husband, in the written statement and in the additional written statement did not squarely admit the factual context of the case of the petitioner. While rejecting the application for judgment upon admission, the learned

court was of the view that evidence was required to be led. Subsequently, before the transferee court, a similar prayer was made by way of a joint petition. The husband's additional written statement was sought to be relied upon and paragraph 7 thereof is quoted below:

“7. For the interest of both the parties, the prayer as made in the said petition under Section 25(1) of the Special Marriage Act, 1954 may be granted and this Learned Court may please to pass necessary order or orders for the interest of justice of both parties.”

3. On perusal of the said additional written statement, it also appears that the allegation of the wife that the marriage was not consummated and was a nullity was denied and the specific case of the husband was that the parties were leading a conjugal life.

Paragraph 6 is quoted below:

“6. Save and except what are matters on record all allegations and/or averments made therein are denied and disputed. It is true that after solemnization of marriage between the petitioner and respondent, both the newly wedded couple started to lead their conjugal life as husband and wife. But due to medical reasons the respondent takes medicines and her soothing effect upon nerves and due to such calming effect of medication upon nerve, the respondent has temporarily been suffering from the absence of willingness/desire of sexual pleasure.”

4. In the joint application the parties sought for a decree of divorce. Whereas, the suit was filed for declaration that the marriage was a nullity on the ground of non-consummation of marriage.
5. In my opinion, the learned court did not act either illegally or with material irregularity. The proper course of action for the parties would be to withdraw the Matrimonial Suit and file an application for divorce on mutual consent as per law. If such application is made, the same shall be disposed of expeditiously without further waiting for the cooling off period in view of the fact that the parties are ad item on the fact that the marriage had failed and both parties were agreeable to a decree of divorce.
6. The order impugned is not interfered with.
7. The revisional application is accordingly disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

**(Shampa Sarkar, J.)**