

ML 54
27.03.2024
Court. No. 19
GB

C.O. 1346 of 2023

Smt. Shyamali Das
Vs.
Sri Soumya Kumar Das

*Mr. Satyam Mukherjee,
Ms. Sayani Ahmed*

...for the Petitioner.

*Mr. Purnasish Gupta,
Ms. Soma Kundu*

...for the Opposite Party.

1. The only question relevant for consideration in this revisional application is whether the order dated December 1, 2022, passed by the learned Additional District Judge at Barasat in Matrimonial Suit No.1328 of 2014, allowing the opposite party to file certain documents being certified copies of orders of other judicial proceedings, was erroneous. The said judicial proceedings were not part of the pleadings.
2. The records reveal that the order was passed without considering the fact that by an earlier order, amendment of the petition filed in the matrimonial suit by the husband was allowed and in the schedule of such amendment, the facts relevant to the documents sought to be filed in court, had been pleaded. The husband did not file the amended petition although permitted by court. The certified copies of those proceedings were sought to be filed with the affidavit-in-chief with the further intention to tender those documents as evidence.

3. The law is well-settled, that evidence in respect of relevant fact and fact in issue, are to be accepted by the court. In the case in hand, there is no foundational basis in the divorce petition justifying filing of the documents. However, once the court had granted an opportunity to amend the petition and bring on record pleadings in connection with those documents, the opposite party ought to have complied with such order, instead of assuming that the documents could be filed in court at any time, even if the plaint case did not disclose the relevance of the same.
4. More over, the wife has also been deprived of a chance to deal with those aspects by filing an additional written statement. The opposite party did not comply with the direction of the court by filing the amended petition as directed, but straight away filed the documents to prove his case without laying any foundation in the pleadings. Evidence beyond pleadings also cannot be allowed.
5. The Court was correct in holding that records of judicial proceeding could always be accepted as evidence, however, the opposite party ought to have followed the procedure and complied with the direction of the court. The learned court based his decision on Section 74 of the Indian Evidence Act although the opposite party wanted to lead evidence on the basis of the certified copies of orders, which were beyond the scope of the pleadings.
6. Under such circumstances, non-compliance of the order should have been viewed with more seriousness. The

revisional application is allowed. The order impugned is set aside. The opposite party is granted liberty to file the amended petition within two weeks from date, upon payment of cost of Rs.10,000/- to the wife. The learned court shall accept the amended petition upon satisfying himself that the cost has been paid. The cost will be paid within two weeks from date. The wife will be entitled to file an additional written statement within two weeks from receipt of the amended petition. The learned court shall frame additional issues. The opposite party shall be entitled to lead evidence on the documents which are already on record, upon compliance with the provisions of the Indian Evidence Act.

7. As the suit is at the stage of evidence, the learned court shall make sincere effort to dispose of the suit within the next six months.
8. The revisional application is accordingly disposed of.
9. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)