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*In The High Court At Calcutta
Civil Revisional Jurisdiction*

C.O. No. 1432 of 2024

Smt. Maya Sarkar alias Mita Sarkar

Vs.

Dr. Samir Sarkar

Mr. Sounak Bhattacharya,
Mr. Sounak Mandal ... For the petitioner.

Mr. Rajdeep Bhattacharya,
Ms. Adrija Bhattacharya ... For the opposite party.

The petitioner is the respondent of the Matrimonial Suit No. 9182 of 2015 filed by her husband, the opposite party herein for dissolution of the marriage between the parties by a decree of divorce. The said suit is pending before the 1st Court of learned Additional District Judge at Alipore, District – 24 Parganas (South).

The petitioner had sought for amendment of her written statement to incorporate the prayer for a decree of restitution of conjugal rights by way of a counter claim and pleadings in support thereof.

The learned Trial Judge by the order impugned being Order No. 105 dated March 01, 2024 has dismissed the said application on the ground that the requirements of Order VIII Rule 6A of the Code of Civil Procedure have not been fulfilled.

Mr. Sounak Bhattacharya, learned advocate for the petitioner submits that the respondent of a suit filed under the Hindu Marriage Act, 1955, by virtue of Section 23A thereof, has the right to seek appropriate relief by way of counter-claim, as such dismissal of the prayer of the

petitioner for amendment of her written statement to include such prayer on the ground that the requirements of the provision of Order VIII Rule 6A of the Code have not been fulfilled, is not sustainable.

Heard learned advocate for the parties, perused the materials-on-record.

The procedure for counter-claim has been prescribed under Order VIII Rule 6A of the Code.

All proceedings under the said Act of 1955, by virtue of Section 21 thereof, shall be regulated, as far as may be, by the Code of Civil Procedure. Section 23A of the said Act of 1955 is *only* an enabling provision and it does not prescribe any procedure to regulate such counter-claim, as such the said provision cannot be interpreted to dilute the requirements prescribed under Order VIII Rule 6A of the Code for such counter-claim.

The prayer for a decree of restitution of conjugal rights by way of a counter-claim under Section 23A of the said Act of 1955 is a completely misconceived action inasmuch as the said provision gives a right to the respondent of any proceeding for divorce or judicial separation or restitution of conjugal rights not only to oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion but also to make a counter-claim for any relief under the said Act of 1955 *on that ground*, obviously, on proof of those grounds, a decree for restitution of conjugal rights cannot follow.

That apart, in the present case, the suit is pending for almost 10 years and the witness action has commenced. The learned Trial Judge, considering such stage of the suit,

has rightly refused to allow the prayer of the petitioner for amendment of her written statement.

The order impugned, for the aforesaid reasons, does not call for any interference.

C.O. 1432 of 2024 is therefore dismissed without any order as to costs.

Disposal of the suit be expedited.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)