

15.04.2024
Ct. No. 19
Items 29&30
Cp

C.O. No. 4479 of 2023
Smt. Reshmi Saha (Mitra)
Versus
Somnath Mitra
With
C.O. No. 1825 of 2022
Somnath Mitra
Versus
Smt. Reshmi Saha (Mitra)

Mr. Sabyasachi Mukherjee,
Mr. Bibek Dey,
Ms. Debaratai Choudhury
Syed Neaz Ahmed,

...for the petitioner in C.O. 4479 of 2023
and for the Opposite Party
in C.O. 1825 of 2022.

Mr. Chandra Bhanu Sinha,
Mr. Jayanta Kumar Dhar,
Ms. Anjali Mishra

...for the Petitioner
in C.O. 1825 of 2022.

Re: C.O. No. 1825 of 2022

1. This revisional application arises out of an order dated May 19, 2022, passed by the learned Additional District Judge, Fast Track Court No. 2, Barrackpur in Matrimonial Suit No.2228 of 2018. By the order impugned, the learned court rejected an application for adjournment filed by the petitioner/husband and continued with the suit as an ex parte suit. The

learned court fixed further date for evidence of the plaintiff. The wife is the plaintiff in the Matrimonial Suit. The suit was proceeding ex parte. The wife/opposite party filed her affidavit-in-chief along with the Marriage Registration Certificate. At that stage, the petitioner/husband, filed a fresh vakalatnama by engaging a new learned advocate and also prayed for recalling of the order by which the suit was fixed ex parte.

2. Another application titled as a 'reply to show cause' with a prayer for acceptance of the same, was also filed. The court found that the application which was named and styled as 'Reply to show cause' was misconceived as no order had been passed asking the petitioner to show cause. The court also recorded in the order impugned that an application under Section 36 of the Special Marriage Act, 1954 was pending, but the husband did not contest the same on the date fixed. An adjournment was prayed for on the ground of illness of a learned senior advocate. Records also reveal that on account of non-submission of the written statement within the statutory period, the suit had been directed to proceed ex parte. Subsequently, on the prayer of the petitioner, the order by which the suit was fixed for ex parte hearing was vacated. The conduct of the learned advocate was also recorded and

the matter was referred to the Bar Council of West Bengal. Such order was thereafter recalled after an unconditional apology was tendered by the learned advocate. Thus, by the order impugned the learned court rejected the prayer for adjournment of the suit and continued with the evidence of the wife, *ex parte*.

3. If find from the order impugned that the learned court had recorded that on an earlier occasion, on the ground of illness of a learned senior advocate, an adjournment was prayed for on May 19, 2022. Yet, on the day the order impugned was passed, another learned advocate filed the vakalatnama and an adjournment was again prayed for on behalf of the learned advocate. The court disbelieved the ground for adjournment and continued with the *ex parte* hearing of the suit. Also, the petitioner's application for recalling of the order fixing the suit for *ex parte* hearing was also rejected as the court found lack of bona fide.
4. The conduct of the petitioner does not appear to be diligent and vigilant. The learned court was left with no other option, but to reject the application. However, for the ends of justice this court is of the view that one last opportunity should be given to the petitioner to contest the suit. *Ex parte* decision in a Matrimonial Suit has a far reaching consequence. The social and

emotional impact on the parties cannot be ruled out. The husband has a right to contest the suit. He has the right to contradict and controvert the allegations against him. He also has the right to set up his own defence. The written statement is already on record. The evidence has just commenced. Thus, the order impugned is set aside and the petitioner is allowed to contest the suit. The written statement shall be accepted.

5. The order by which the suit was fixed for ex parte hearing is also set aside. The learned Advocate for the wife has submitted that the application for maintenance pendente lite has already been withdrawn. The suit is now ready to continue from the stage of evidence.
6. Under such circumstances, the petitioner shall proceed as directed by the learned trial court. The evidence of the PW-1 is going on, which shall continue. Thereafter, the husband shall be entitled to cross-examine the PW-1 and any other witness on behalf of the wife. Then, the husband shall adduce evidence and be cross-examined. The suit shall proceed expeditiously. This order will be subject to payment of cost of Rs.10,000/- to the wife. The time frame and the manner in which the cost shall be paid, will be decided by the learned court. Cost is being imposed in view of

the fact that the suit has been running in the ex parte board since long and on various occasions the husband either failed to appear before the court or had sought for adjournment on frivolous grounds, as recorded by the learned court. No further adjournments shall be granted to the parties.

Re: C.O. No. 4479 of 2023

7. This is an application for expeditious disposal of Matrimonial Suit No. 2228 of 2018, which is pending before the learned Additional District Judge, Fast Track Court No. 2 at Barrackpore.
8. The prayer of the petitioner is innocuous. Neither party stands to lose if a proceeding is disposed of expeditiously. In fact, such expeditious disposal shall enure to the benefit of the parties. Hence, there is no requirement for service of prior notice upon the opposite party.
9. The revisional application is disposed of with a request upon the learned court to make a sincere endeavour to dispose of the suit within the next six months from the next date fixed. Adequate opportunity shall be granted to the parties to contest the proceeding.
10. This court has not expressed any opinion on the merits of the suit. The learned court shall proceed independently and in accordance with law.

11. Thus, both the revisional applications are accordingly disposed of.

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

(Shampa Sarkar, J.)