

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FA 146 of 2024

Sayandeep Das
-vs-
Ruhi Das

For the appellant : Mr. Srinjoy Das,
Mr. Arvind Kumar Singh

Heard on : December 9, 2024.

Judgment on : December 9, 2024.

Sabyasachi Bhattacharyya, J.:

1. Supplementary affidavit filed in Court today be kept on record.
2. It is seen from the records that the respondent-wife has been repeatedly absent at the time of call on several occasions.
Hence, the appeal is taken up for final hearing *ex parte* against the respondent.

3. The crux of the matter is that a divorce suit filed by the appellant/husband against the respondent-wife was dismissed by the impugned judgment and decree.
4. During pendency of the appeal, the appellant-husband has been impleaded in a suit for divorce filed by a third party against the respondent-wife alleging that there is a subsisting marriage between the respondent-wife and the said third party.
5. In the application under order XLI Rule 27 of the Code of Civil Procedure, bearing CAN 1 of 2023, the appellant-husband has annexed, *inter alia*, the order of impleadment of the husband in the said suit.
6. In the supplementary affidavit, the appellant-husband has also annexed the purported marriage registration certificate of the respondent with the said third party, namely, Kaushik Mukherjee. From the said registration certificate it is evident that such marriage was contracted on August 24, 2008 whereas the marriage between the present parties was entered into in the year 2018, that is, apparently during the subsistence of the earlier marriage of the respondent.
7. The pendency of a divorce suit between Kaushik Mukherjee and the respondent is also *prima facie* an indicator as to the

subsistence of the previous marriage, which affords strong ground to the appellant to obtain a decree of nullity as prayed for in the present ligation.

8. Since such new matter was discovered subsequent to the passing of the impugned judgment and is germane for proper and complete adjudication of the *lis*, we are of the opinion that the said documents are required to be considered by the learned trial Judge, as and when duly proved by the appellant, and accordingly, the matter ought to be remanded for a fresh consideration in such context.
9. Hence, FA No. 146 of 2024 along with CAN 1 of 2023 are allowed, thereby setting aside the impugned judgment and decree dated May 12, 2023 passed by the learned Additional District and Sessions Judge, Fast Track Second Court at Sealdah, District – South 24 Parganas in Matrimonial Suit No. 43 of 2020 and remanding the suit to the learned trial Judge for a fresh adjudication on merits upon granting adequate opportunity to the plaintiff/appellant to adduce further evidence in respect of the alleged prior marriage of the respondent-wife.

10. Needless to say, sufficient opportunity shall be afforded to the respondent-wife as well to cross-examine the concerned witnesses as and when adduced by the appellant.
11. Upon such opportunity being given, the learned Trial Judge shall hear the suit afresh and re-adjudicate the issues involved and pass a fresh judgment and decree.
12. It is expected that the entire exercise shall be completed as expeditiously as the business of the learned trial Judge permits.
13. The records be sent down immediately by Special Messenger at the cost of the appellant, to be deposited by the appellant within a week from date.
14. In view of the nature of the above order of remand, no formal decree need be drawn up.

I agree.

(Supratim Bhattacharya, J.)

(Sabyasachi Bhattacharyya, J.)