

11.09.2024
Item No.17-18
RP/AN
Ct. No.1

MAT 1842 of 2023
Lt. Col Arijit Bhattacharjee
Vs.
State of West Bengal & Ors.
+
IA No.CAN 1 of 2023, CAN 2 of 2023
CAN 3 of 2024 (file not found)

With
MAT 1844 of 2023
Lt. Col Arijit Bhattacharjee
Vs.
State of West Bengal & Ors.
+
IA No.CAN 1 of 2023
CAN 2 of 2024 (file not found)

Mr. M.P. Gupta
Mr. Debajyoti Deb
Ms. Somdyuti Parekh
Ms. Antara Panja
..... For Appellant
Mr. Sarwar Jahan
Mr. Sayantan Hazra
Ms. Tapati Sarkar
.... For Writ Petitioner/Respondent
Mr. Anand Farmania
Ms. Sormi Dutta
.... For State

1. This intra-Court appeal by a third party, who is the husband of the writ petitioner, has challenged the order dated 10th May, 2023 passed in WPA 23011 of 2006. In the said writ petition the respondent/writ petitioner had challenged the Marriage Certificate No.13 of 2006 alleging that the marriage certificate is a fraudulent document as she was not in India at that relevant point of time and she was in Bhutan. The writ petition was filed in the year 2006 and it appears that the order of stay was granted on the said marriage certificate on 28th June, 2007. It appears that subsequently the

writ petitioner got married to the appellant in the year 2007 and out of the said wedlock two children were born who are minors. Disputes and differences arose between the spouses which led to filing of a matrimonial suit, being Matrimonial Suit No.104 of 2021, at the behest of the appellant/husband for annulment of marriage under Section 24 of the Special Marriage Act pending before the learned Additional District Judge, 10th Court, Barrackpore.

2. Apart from that the respondent no.3 has also filed a Miscellaneous Case No.8 of 2006 under Section 97 of the Code of Criminal Procedure and in that case a report was also filed by Titagarh Police Station. The appellant has subsequently filed a criminal case before the very same police station in Case No.26 of 2021 dated 11.07.2021 under various provisions of Indian Penal Code and investigation is under process. The question would be as to whether a writ petition could have been entertained for setting aside the marriage certificate. Under normal circumstances a Court might have examined as to whether there was an error in the decision making process to render the certificate as null and void. However, in the present case the factual position requires a different approach. This is so because after the writ petition was filed in the year 2006 and after obtaining an order of interim stay on the impugned certificate the writ petitioner/respondent got married to the appellant in the year 2007 and out of the said wedlock two children were born. The appellant/husband has filed a suit for annulment

of marriage on the ground that the writ petitioner has suppressed her marriage with Sheikh Moshur Rehman. It is no doubt true that when the writ petition was filed the appellant could have been impleaded as respondent because the appellant got married to the writ petitioner only in the year 2007 and on the date when the writ petition was disposed of by setting aside the marriage certificate the difference and disputes between the parties was so bitter and the matter was pending before the civil as well as criminal court. Therefore, at this stage of the matter, the writ petitioner ought to have impleaded the appellant/husband as party respondent. It appears that pendency of the matrimonial suit was brought to the notice of the learned Single Bench and precisely for that reason in the penultimate paragraph certain observations have been made. However, we are of the view that since disputes and differences have arisen between the parties and the matrimonial suit for annulment of marriage is based on the marriage certificate, which was impugned in the writ petition, the appellant was entitled to be heard in the writ petition before any order was passed on the writ petition.

3. In the earlier hearing we have directed the parties to appear before us. Both the parties appeared and had referred the matter to the mediation and conciliation center of this Court for mediation. However, the mediation turned out to be unsuccessful as the parties were not ad idem and the matter has come up before us.

4. Thus, for the above reasons stated above, we are of the view that on the date when the writ petition was disposed of, the appellant was required to be heard in the matter.
5. One more fact which needs to be taken note is that the writ petitioner/wife has filed written statement in the matrimonial suit where she is stated to have raised a plea that the marriage certificate which was impugned in the writ petition is a fraudulent certificate. Therefore, there may not be inconsistent orders. One more reason which prompted us to take note of the report submitted by the Inspector of Titagarh Police Station dated 11.02.2023. In the said report it is stated that the Registrar General of Marriage, West Bengal through email vide letter no.2012/RGM dated 16.12.2021 has mentioned that the marriage between Sheikh Moshur Rehman and the writ petitioner was solemnized on 02.06.2006 as per the provisions laid down under Section 13 of the Special Marriage Act, 1954 and that the investigation in Titagarh Police Station no.26 of 2021 is in progress. Therefore, we are of the view that the writ petitioner may be heard afresh after giving liberty to the appellant/husband to file his affidavit-in-opposition and the matter should be disposed of on merits. The other issues which require to be considered as to whether the stand taken by the writ petitioner that she was not in the country on the date of alleged marriage with Sheikh Moshur Rehman is also required to be adjudicated and the question would be as to whether a writ Court can do so.

6. Accordingly, the appeal and the connected applications are **allowed** and the order passed in the writ petition is set aside. The writ petition is restored to the original file and number of this Court and the appellant herein, namely, Lt. Col. Arijit Bhattacharjee is impleaded as 5th respondent in the writ petition and the writ petitioner is directed to amend the cause title. The appellant, namely, the fifth respondent in the writ petition shall file his affidavit-in-opposition within four weeks from date. Reply, if any, be filed within three weeks thereafter. Parties are at liberty to mention before the appropriate Hon'ble Bench having determination.
7. It is made clear that pendency of the writ petition shall not be a bar to the parties to pursue the matrimonial suit.
8. During the course of argument the learned advocate for the appellant/husband on instruction submitted that the appellant will pay all expenses towards the education of the both child which will include school fees, cost of purchasing books and other articles, tuition fees of schools etc. and the same shall be remitted without any default. There is also an interim direction issued by the learned Judicial Magistrate wherein the amount payable to the children has been mentioned.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

