

16 10.05.2024

Ct-08

ar

MAT 1888 of 2023

with

IA No. CAN 1 of 2023

CAN 2 of 2023

Dr. Sukdeb Barman

Vs.

Shourjyodeep Barman & Ors.

Mr. Nayan Chand Bihani

Mr. Sabyasachi Mondal

Ms. Payel Khanra

... For the Appellant

Mr. Sayantan Rakshit

... For the Respondent nos. 5,6 & 7

Ms. Susmita Saha Dutta

Mr. Niladri Saha

Mr. Madhurima Basu

... For the Respondent/

Writ Petitioner

1. We have heard the learned counsel appearing for the parties.

2. CAN 2 of 2023 is an application for leave to prefer an appeal. The applicant/appellant has disputed the relationship with the writ petitioner as according to the applicant he is not the biological father of the writ petitioner.

3. Mr. Narayan Chand Bihani, learned Counsel for the applicant has submitted that the writ petitioner filed the writ petition giving false impression that he is the biological son of the applicant and is now trying to take the maturity benefit of UTI Children's Career Fund on attaining

majority.

4. Before the writ petitioner attained majority, a Matrimonial Suit was filed for divorce on the ground of bigamy in the year 2014. The writ petitioner has deliberately suppressed the aforesaid fact and did not purposely implead the applicant in the writ petition. The presence of the applicant/appellant was necessary for adjudication of the issues raised by the writ petitioner.

5. Ms. Susmita Saha Dutta, learned counsel representing the writ petitioner, submits that the writ petitioner is the son of the applicant and has drawn our attention to the relevant paragraphs of the Matrimonial Suit to show that during the period when the writ petitioner was born the applicant was potent.

6. It appears that a Matrimonial Suit is pending where the legitimacy of the children is an issue. The suit was filed in 2014 prior to the filing of the writ petition. We feel that the applicant ought to have been impleaded in the writ petition as the issue raised by the writ petitioner in the writ petition can be resolved only after giving an opportunity of hearing to the applicant.

7. We have also taken note of the fact that the

applicant has invested the said amount on an assumption that the writ petitioner is his son, which fact is now being disputed and is an issue pending in a Matrimonial Suit. The biological mother of the writ petitioner has refused DNA test. Such fact could result in an adverse interference against the wife. The Trial Court is to take into consideration such fact. We, however, refrained from expressing our views in this regard. We cannot at the same time ignore the fact that in the event the allegation of adultery is proved then the writ petitioner cannot claim the benefit of the said scheme of UTI unless the writ petitioner independently establish that the applicant is his biological father. On such consideration, we think that the suit should be disposed of at the earliest.

8. The order directing payment of maturity amount to the writ petitioner would cause serious prejudice to the applicant. On that ground we allow the application for leave to prefer the appeal.

9. We direct the writ petitioner to implead the applicant/appellant as a respondent in the writ proceeding. The applicant is given liberty to file affidavit in the writ proceeding. The order impugned is set aside only on the ground that the presence of the applicant is necessary for proper

and better adjudication of the issues involved.

10. We direct UTI to deposit the entire maturity amount with the Learned Registrar General on or before 22nd May, 2024. In turn, the learned Registrar General shall deposit the said amount in a suitable interest bearing fixed deposit scheme in any nationalised bank yielding highest return till the disposal of WPA 2832 of 2021 or any order that may be passed in the writ proceeding, whichever is earlier.

11. We also feel that the Matrimonial Suit may be disposed of at the earliest. We accordingly direct the learned District Judge, Uttar Dinajpur to dispose of the Matrimonial Suit No. 80 of 2014 preferably within a period of six months from 16th May, 2024 as we have been informed that the above date is fixed for further evidence. It is further directed that no adjournment shall be granted to the parties unless it is unavoidable. The parties shall cooperate with the learned District Judge in disposing of the suit at the earliest.

12. We make it clear that the observations made in this order shall not influence the learned District Judge before whom the Matrimonial Suit is pending.

13. Since no affidavit is called for, the allegations

are deemed to have been denied.

14. The application for leave to prefer an appeal and the application for stay are allowed on the consideration that the applicant/appellant should have been given an opportunity to bring all facts before the writ court before deciding the entitlement of the writ petitioner to the said fund.

15. In view of the above, the appeal being MAT 1888 of 2023 stands disposed of along with CAN 1 of 2023 and CAN 2 of 2023.

16. However, there shall be no order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Soumen Sen, J.)

(Uday Kumar, J.)