

29.02.2024
Item No.34
Ct. No. 7
KS

C.O. 3429 of 2023
Smt. Ananya Ghosh
Vs.
Sri Sujit Shil

Mr. Tapash Bhattacharya
Mr. Aviroop Bhattacharya
Ms. Sahima Mollah

.....for the Petitioner

Mr. Ashim Kumar Routh
Mr. Ananya Mondal
Mr. S. Barik

.....for the opposite party

1. Affidavit of service filed in Court today be taken on record.
2. The order no.15 dated 19th August, 2023 passed by the learned Additional District Judge, 7th Court at Barasat in Matrimonial Suit No.1415 of 2021 is under challenge in this application under Article 227 of the Constitution of India at the instance of the wife.
3. By the order impugned, the cross-examination of P.W.1 in the matrimonial suit was closed and a date was fixed for evidence of the opposite party witness.
4. Mr. Bhattacharya, learned advocate appearing for the petitioner submits that the petitioner prayed for time on 19th August, 2023 as the miscellaneous case under

Section 36 of the Special Marriage Act filed by the petitioner herein was yet to be disposed of.

5. The learned advocate appearing for the opposite party submits that the petitioner has not complied with the repeated directions passed by the learned Court below in Miscellaneous Case No.78 of 2023 upon the wife to file the affidavit of assets and liabilities. He submits that since the petitioner was not interested in proceeding with the miscellaneous case, the learned court below had no other alternative but to proceed with the hearing of the Matrimonial Suit No.1415 of 2021.
6. In reply, Mr. Bhattacharya, learned advocate submits that the petitioner shall file the affidavit of assets and liabilities, if not already filed in Misc. Case No.78 of 2023 on or before March 8, 2024. In view of such submission, this Court directs the petitioner to file the affidavit of assets and liabilities in the Misc. case on or before March 8, 2024 after serving an advance copy of such affidavit of assets and liabilities upon the learned advocate representing the husband before the learned Court below. The husband/opposite party herein shall also file the affidavit of assets and liabilities pursuant

to the direction passed in Misc. Case No.78 of 2023, if not already filed, on or before March 8, 2024 after serving an advance copy of the same upon the learned advocate of the wife before the learned Court below. Upon such affidavit of assets and liabilities being filed by the wife within the time limit mentioned hereinbefore, the learned Additional District Judge, 7th Court at Barasat shall prepone the date of hearing of the Misc. Case No.78 of 2023 and shall dispose of the same as expeditiously as possible but, positively within a period of twelve weeks from the next date to be fixed in terms of the order. After disposal of the miscellaneous case, the learned Additional District Judge, 7th Court at Barasat shall fix a date for cross-examination of the P.W. 1 and shall dispose of the Matrimonial Suit No.1415 of 2021 as expeditiously as possible but, positively within a period of four months from the date to be fixed for cross-examination of the P.W.1 in terms of this order.

7. Needless to mention that no unnecessary adjournments shall be granted to either of the parties either in the Miscellaneous Case No.78 of 2023 or in the Matrimonial Suit No.1415 of 2021.

8. The Miscellaneous case was filed praying for alimony *pendente lite*. Therefore, the Misc. Case is required to be disposed of prior to disposal of the matrimonial suit. This Court is, therefore of the considered view that the learned trial judge ought not to have closed the evidence of the husband in the matrimonial suit.
9. For the reasons, as aforesaid, the order closing the evidence of the P.W.1 thereby depriving the petitioner of her right to cross-examine the P.W.1 calls for interference.
10. For the reasons, as aforesaid, the order dated 19th August, 2023 is set aside.
11. With the above observations and directions, C.O. 3429 of 2023 stands disposed of.
12. There shall be, however, no order as to costs.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)