

March 19, 2024
Sl. No.46
Court No.19
s.biswas

CO 4086 of 2023

Smt. Maya Sarkar alias Mita Sarkar
vs.
Dr. Samir Sarkar

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder

... for the petitioner

Mr. Rajdeep Bhattacharya
Mr. Debashis Banerjee

... for the opposite party

1. The petitioner is aggrieved by the order dated September 30, 2023 passed by the learned Additional District Judge, 1st Court at Alipore, South 24 Parganas. The learned court rejected an application filed by the wife for recall of PW1 in order to prove the documents which were already marked as exhibits.
2. The contention is that the documents produced by the husband were taken together by the learned court and marked exhibits, in the absence of the wife. The learned advocate for the wife, being an aged person was not available before the learned court. The evidence was recorded during the pandemic.
3. The learned court held that the wife could challenge the probative value of such documents at the hearing. However, it is submitted that the admissibility of those documents were required to be gone into, before the same were marked by the learned court.

4. Mr. Rajdeep Bhattacharya, learned advocate for the opposite party, handed up copies of the exhibits and it appears that complaint letters written to the police authority by the husband and the GD entries which are entered by the police station, had been marked exhibits.
5. It is insisted by Mr. Rajdeep Bhattacharya that such exhibits were all original letters which were signed by the husband and no photocopies were produced. Thus primary evidence was always admissible.
6. On the other hand, Mr. Sounak Bhattacharya, learned advocate for the petitioner, submits that the order reflects that copies of GD extracts were also submitted. Thus, whether those GD extracts were tendered and proved as per the provision laid down under the Indian Evidence Act, 1872, were required to be considered.
7. This court finds that the originals were produced by the husband. However, as a question has arisen as to whether any photocopies of any document were marked as exhibits, this court directs the learned court to inspect the records and the exhibits which were marked at the instance of the husband. If it is found that all the copies were originals and not copies of any document, no further order to recall the husband

to prove such documents will be passed. However, if any document happens to be photocopy of the original, in that event the husband shall be recalled in order to prove those photocopies in terms of Indian Evidence Act, 1872. The learned court shall pass necessary orders according. The entire exercise shall be completed within a month from the next date fixed.

8. It is also submitted on behalf of the wife that an application for reimbursement of the medical expense, is pending. It is further submitted that the husband is a state government employee and his service rules cover the medical expense of the wife. The court shall decide such application and pass necessary orders in accordance with law. This court has not expressed any opinion with regard to such application and also with regard to evidence on record.
9. The suit should be expedited and disposed of within six months from the date of communication of this order, upon completion of the directions made herein. The petitioner shall not cause unnecessary delay.
10. The revisional application stands disposed of.
11. All the parties are directed to act on the basis of the server copy of the order.

12. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)