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IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

C.O. 88 of 2024

Bidisha Biswas
-vs-
Sri Ashoke Chaki

Mr. Abhishek Sarkar
... for the Petitioner.

Mr. Sanjay Mazoomdar
Ms. Anindita Das
Mr. Sukanya Adhikary
...for the Opposite party.

Petitioner being aggrieved by the order dated 7th October, 2023 has preferred this application before this Court under Article 227 of the Constitution of India.

Petitioner contended that the opposite party herein being the husband of the petitioner filed an application for Restitution of Conjugal Rights under section 9 of the Hindu Marriage Act. It is further submitted on behalf of the petitioner that she was pregnant at the material point of time and she also became seriously ill and for which she could not take steps in the said proceedings. Thereafter on 31st July, 2022 the petitioner gave birth of a male child. The main allegation ventilated in

the present application by the petitioner is that taking advantage of her helpless condition during pregnancy the opposite party obtained an ex-parte decree of restitution of conjugal rights against the present petitioner. Accordingly, petitioner has prayed for setting aside the ex-parte decree of restitution of conjugal rights passed by the Court below in aforesaid Matrimonial Suit No. 346 of 2022 and that she was not aware about the ex-parte decree passed by the Court below.

Learned counsel appearing on behalf of the opposite party submits that the petitioner's remedy lies upon Order IX Rule 13 of the Code of Civil Procedure to pray for setting aside the ex-parte decree and for restoration of the suit in its original file. Instead of exhausting the legal provision as laid down in the Code, she has come before this Court under Article 227 of the Constitution of India which is not maintainable.

Having considered the submissions made on behalf of the parties and also considering the fact that equal efficacious remedy lies to the petitioner before the court below, the present application being C.O. 88 of 2024 is hereby disposed of giving opportunity

to the petitioner to make an appropriate application under Order IX Rule 13 of the Code of Civil Procedure before the Court below.

In the event of filing such application by the petitioner/wife within a period of one month from the date of communication of this order before the Court below, the Court below will dispose of the said application on merit after giving opportunity to both the parties to contest without being influenced by any observation made herein. The issue of limitation will not stand in the way for the disposal of the said application on merit.

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Ajoy Kumar Mukherjee, J.)