

Sl.23
19.05.2025
Court No.6
BP

C.O. 1751 of 2025

Chandrajit Dalal
-versus-
Tanuja Dalal nee Das

Mr. Uttiya Ray
Mr. Ashutosh Pal
..for the petitioner

Mr. Sudipta Dasgupta
Ms. Sinjini Chakraborty
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the husband/opposite party in a proceeding under Order 9 Rule 13 of the Code of Civil Procedure and is directed against an order being no.17 dated 3rd April, 2025 passed by the learned Additional District and Sessions Judge, 3rd Court, Barasat, North 24 Parganas in Misc. Case No. 129 of 2021.

By the order impugned the application filed by the petitioner herein for vacating the ex parte hearing of the miscellaneous case stood rejected.

The petitioner herein filed a Matrimonial Suit No. 787 of 2017 which was decreed ex parte on 19th December, 2017. The opposite party herein filed an application under order 9 Rule 13 of the Code of Civil Procedure being Misc. Case No. 129 of 2021 praying for setting aside the ex parte decree. The said miscellaneous case was fixed for ex parte hearing on the ground that the petitioner herein did not take any steps.

The petitioner filed an application for vacating the ex parte hearing of the miscellaneous case.

The learned advocate appearing for the petitioner submits that 20th December, 2024 was fixed for evidence of the petitioner but since the mother of the petitioner was suffering from illness he could not attend the court for giving evidence.

The learned advocate appearing for the opposite party vehemently opposes the prayer of the petitioner. He submits that the petitioner herein is trying to delay the disposal of the miscellaneous case. He further submits that the petitioner is taking unnecessary adjournment in the miscellaneous case.

Considering the fact that the miscellaneous case has been filed under the provisions of Order 9 Rule 13 of the Code of Civil Procedure for setting aside an ex parte decree passed in a matrimonial suit and the ground stated in the application for vacating the ex parte order, this Court is of the considered view that a last opportunity should be given to the petitioner to contest the miscellaneous case.

In view thereof, the order of ex parte hearing dated 20th December, 2024 is set aside. The petitioner is relegated to the stage as on the date of passing of the order dated 20th December, 2024.

Accordingly. C.O. 1751 of 2025 stands allowed.

It has been uniformly submitted by the learned advocates for the parties that the petitioner did not cross-examine the witness of the opposite party in the miscellaneous case. Cross-examination is a valuable right and this Court is inclined to pass the following directions.

The learned trial judge is directed to allow the petitioner herein to cross-examine the witness of the opposite party in the miscellaneous case on the next date fixed i.e. on 1st July, 2025

and to proceed with the suit in accordance with law. The opposite party witness in the miscellaneous case should be present on 1st July, 2025 to face the cross-examination.

The learned trial judge is requested to reject any prayer for unnecessary adjournment and shall make an endeavour to dispose of the Miscellaneous Case no.129 of 2021 as expeditiously as possible.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)