

25.02.2025
Item No.23
BR

CO 1956 of 2023

Chanchal Bishnu

-vs-

Mousumi Bishnu

Mr. Chanchal Bishnu
.... Petitioner-in-person

Mr. Samrat Choudhury,
Mr. Debnandan Bhattacharyya
... for the O.P.

The present revisional application has been preferred against Order No. 10 dated 6.9.2022 and Order No. 11 dated 12.9.2022 passed by the learned Additional District Judge, 4th Court, Birbhum at Suri in Misc. Case No. 03 of 2021 (Mousumi Bishnu Vs. Chanchal Bishnu) arising out of Mat. Suit No. 08 of 2021.

Vide the said order in Misc. Case No. 08 of 2021 the trial Court has granted an amount as maintenance to the wife and children.

It is submitted by the petitioner/husband/plaintiff that the Mat. Suit being 08 of 2021 had been initiated by

the petitioner/husband under Section 9 of the Hindu Marriage Act praying for restitution of conjugal rights. Subsequently, due to several developments which also includes allegation under the POCSO Act levelled by his daughter and the fact that the petitioner was detained in custody for almost 150 days, the petitioner by an application on affidavit dated 6.9.2022 prayed before the trial Court for withdrawal of the Mat. Suit which was initiated by him.

It appears from the materials on record that the Court without considering the prayer of the petitioner for withdrawal of the suit, proceeded with the Misc. Case filed by the wife and granted maintenance on the ground that the MAT suit had already been stayed.

It is the contention of the learned counsel for the opposite party herein that the Misc. Case was filed prior to the prayer for withdrawal of the suit.

On hearing the learned counsel appearing for the opposite party and hearing the petitioner (in person) and also considering the materials on record, it appears that admittedly the suit has been initiated by the petitioner/husband and it is the husband's prayer that he does not wish to proceed with the matrimonial suit any more. The said prayer should have been

considered by the trial Court in accordance with law.

The said application is still pending consideration though the petitioner's prayer for stay of the Misc. case was rejected .

Regarding the grant of maintenance in favour of the wife and children , among them one daughter is about 24 years old. It is for the opposite party herein to approach the appropriate forum for grant of maintenance as provided under the law. But the prayer of the plaintiff/petitioner /husband praying for withdrawal of a suit which has been initiated by him cannot be ignored by the Court.

Accordingly, the civil revision is disposed of with the direction that the trial Court shall hear the petitioner's application dated 6.9.2022 in presence of both the parties and pass an order in respect of the said petition regarding the withdrawal of the Mat. Suit in accordance with law and dispose of the same within 30 days from the date of communication of this order, without being influenced by the observations in this order.

Let a copy of this order be sent to the trial Court at once.

Urgent Photostat certified copy of this order, if applied for, be given to the learned

counsel for the parties on usual undertakings.

(Shampa Dutt (Paul), J.)