

17-03-2025

ct no. 13

Sl. 10

sp

MAT 2235 of 2024

Bela Saha @ Bela Rani Saha

-Versus-

The State of West Bengal & Ors.

Mr. Biswabrata Basu Mallick, ld. A.G.P.

Mr. Sayan Ganguly

...for the State

Mr. Debabrata Saha Ray, ld. Sr. Adv.

Mr. Subhankar Das,

Mr. Sankha Biswas

..for the respondent no. 7

1. The matter was heard when the appellant was represented virtually on earlier occasion.

2. The appellant is not the represented today.

3. The brief facts relevant to the case are that one Biswanath Saha, private respondent no. 6 is a MR Distributor at Burdwan Block under Kandi Sub-Division in the District of Murshidabad. He was married to the appellant/writ petitioner.

4. The appellant/writ petitioner's case is that the MR Distributor has an extra marital affair with another lady and a girl child was born out of such relations. The Private Respondent No.6 applied for divorce against the writ petitioner/appellant, that was dismissed.

5. He thereafter filed an application before the respondent authorities for conversion of his

distributorship from a sole proprietorship to a partnership firm. He brought in his illegitimate daughter as partner with him. The principal ground urged for such conversion before the respondent authorities was that the distributor was in failing health.

6. The respondent authorities accepted the change in the nature and character of distributorship and converted it from that of sole proprietorship to one of a partnership firm, namely, "Biswanath Saha and others".

7. The appellant/writ petitioner/wife challenged the aforesaid order, converting the distributorship to a partnership firm, dated 25th July, 2024, inter alia, under the ground that it was violative of the provisions of the WBPDS (M&C) Order, particularly, Clause 20(vii)(a) thereof.

8. It is further alleged that the conversion into a partnership was primarily to deprive the appellant/writ petitioner of appropriate amount of maintenance, since after conversion into a partnership, the income of the respondent/MR Distributor would stand reduced. It is also alleged that an illegitimate daughter cannot be a partner or claimed right over the property of the MR Distributor.

9. Having carefully considered the impugned judgment, this Court finds that the Single Bench has considered the provisions of Hindu Marriage Act and Clause 20(vii) of the aforesaid Control Order and did not

find any restriction on an illegitimate daughter being included as partner in the distributorship in the name of the husband/respondent.

10. Insofar as the personal rights of the writ petitioner/appellant are concerned, this Court is of the view that the same are not affected by the order impugned in the writ petition dated 25th July, 2024.

11. Upon death of the petitioner, if at all, and subject to his not executing any testamentary document, the law of inheritance will follow as a matter of course. Even for the purpose of maintenance that the writ petitioner seeks to claim from the respondent/husband, the actual income of the appellant, could be determined independent of the impugned order dated 25th July, 2024. The maintenance Court is entitled to apply the principle of fraudulent preference for determining the actual income of the respondent/husband.

12. The impugned order, therefore, calls for no interference.

13. Hence, MAT 2235 of 2024 fails and is hereby dismissed.

14. There shall be no order as to costs.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)