

N.22S1

151/CL

10.04.2026
DL-06
Ct-06
(S.R.)

CO 1013 of 2026

Smt. Sanjukta Ghosh

v.

Sri Saumyajit Ghosh

Mr. Aasis Kumar Das, Adv.
Mr. Suman Chattopadhyay, Adv.
... for the petitioner.

Mr. Subhojit Seal, Adv.
Mr. Rajdeep Mantha, Adv.
Mr. Soumya Khan
... for the respondent/opposite party.

1. This revisional application is directed against an order dated December 15, 2025, passed by the learned Additional District and Sessions Judge, Fast Track Court – II, Sealdah, South 24-Parganas whereby all further proceedings of Misc Case No.13 of 2022 have been stayed.
2. Misc. Case No. 13 of 2022 owes its genesis to an application under Section 36 of the Special Marriage Act, 1954 which has been filed by the petitioner in connection with Matrimonial Suit No.77 of 2022 instituted by the petitioner for a decree of divorce *inter alia* on the grounds of cruelty and desertion.
3. The opposite party has also filed a suit for divorce. The said suit had initially been filed in the Family Court, Saket Court Complex, New Delhi and was registered as SMA 32 of 2022. The petitioner approached the Hon'ble Supreme Court by way of

an application seeking transfer of the SMA 32 of 2022 pending before the Family Court, Saket Court Complex, New Delhi to the Court of the learned District Judge, Alipore, South 24-Parganas. Such application was allowed by the Hon'ble Supreme Court by an order dated August 2, 2023 whereupon the said suit being 32 of 2022 stood transferred to the learned District Judge at Alipore.

4. Upon transfer, the said suit was renumbered as MAT Suit No.2681 of 2023. The said suit being MAT Suit No.2681 of 2023 has been transferred by the learned District Judge to the Court of the learned Additional District Judge, 10th Court at Alipore and the same is pending there.
5. Since Matrimonial Suit No. 2681 of 2023 (erstwhile SMA 32 of 2022) had been instituted earlier than Matrimonial Suit No. 77 of 2022 (instituted by the petitioner before the learned 2nd Fast Track Court at Sealdah), therefore, the opposite party filed an application under Section 10 of the Code in Matrimonial suit No.77 of 2022 praying for, *inter alia*, for stay of the proceedings of Matrimonial Suit No. 77 of 2022. Upon such application being filed, the proceedings of Matrimonial Suit No.77 of 2022 were stayed by the learned Trial Court by an order dated December 15, 2022, which has been assailed by the petitioner by filing CO 1012 of 2026.
6. On the same day, another order was passed by the

said learned Trial Court thereby staying Misc. Case No.13 of 2022, which has been initiated by the petitioner under Section 36 of the Special Marriage Act. The said order has been assailed by filing the C.O. 1013 of 2026 which has been heard and decided today by setting aside the order impugned therein by passing the following order:

7. Mr. Das learned Advocate appearing for the petitioner submits that the order impugned suffers from jurisdictional error inasmuch as, a proceeding under section 36 of the Special Marriage Act, 1954, which is for grant of alimony pendente lite could not have been stayed merely by reasons of Matrimonial Suit No.77 of 2022 having been stayed on the opposite party's application under Section 10 of the Code of Civil Procedure, 1908.
8. Mr. Seal learned Advocate appearing for the opposite party submits that the learned Trial Court has committed no error in passing the order impugned inasmuch as in terms of Section 40A(2)(b) of the 1954 Act, if two petitions are filed for a decree of divorce under section 27 of the 1954 Act whether in the same District Court or in a different Court in the same District, both the petitions should be tried and heard together by that District Court.
9. He further submits that marriage has broken down irretrievably and there is no chance of revival. In support of his such contention, he relies on the

judgments of the Hon'ble Supreme Court in the case of ***Naveen Kohli vs Neelu Kohli*** reported at ***(2006) 4 SCC 558***; ***Samar Ghosh vs Jaya Ghosh*** reported at ***(2007) 4 SCC 511*** and ***K. Srinivas Rao vs D.A. Deepa*** reported at ***(2013) 5 SCC 226***.

10. The learned Trial Court has passed the order impugned believing that the order passed by the said learned Court thereby staying all further proceedings of Matrimonial Suit No.77 of 2022, on the opposite party's application under section 10 of the Code, would as a necessary consequence lead to the stay of all further proceedings of Misc Case No. 13 of 2022 as well.

11. Section 10 of the Code reads thus:

10. Stay of Suit:- *No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in ¹[India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before ⁴[the Supreme Court.*

Explanation.--The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

12. A meaningful reading of the said provision would show that what is required to be stayed upon all conditions mentioned in Section 10 being satisfied is the **“trial”** of the subsequent suit and not interlocutory proceedings in connection therewith.

13. It is well settled that the object of the prohibition contained in Section 10 of the Code is to prevent Courts of concurrent jurisdiction from trying two parallel suits simultaneously in order to avoid inconsistent findings on the matters in issue and that the provision of section 10 of the Code is in the nature of a rule of procedure which neither affects the jurisdiction of the Court to entertain or deal with the latter suit nor creates any substantive right. It is, therefore, equally well settled that the said provision does not bar passing of interlocutory orders. [See: **Indian Bank v. Maharashtra State Coop. Marketing Federation Ltd.** reported at **(1998) 5 SCC 69]**
14. In such view of the matter, it was not open to the learned Trial Court to stay all further proceedings of Misc. Case No. 13 of 2022 under Section 36 of the 1954 Act.
15. Moreover, the object of the provisions of section 36 of the 1954 Act is to save the wife from vagrancy and destitution during continuance of the matrimonial proceedings. It is a provision aimed at ensuring social justice and procedural equality. If by dint of an application under section 10 of the Code, even proceedings under Section 36 of the 1954 Act are stayed, the very grain and object of the said provision would be stultified.
16. As regards the judgments of the Hon'ble Supreme

Court in the cases of **Naveen Kohli** (supra), **Samar Ghosh** (supra) and **K. Srinivas Rao** (supra) are concerned, the same pertain to dissolution of marriage by the Hon'ble Supreme Court on the ground of irretrievable breakdown of marriage. Irretrievable breakdown of marriage is not yet a ground for divorce under the 1954 Act. Indeed the Hon'ble Supreme Court can still grant a decree of divorce on the ground of irretrievable breakdown of marriage in exercise of its plenary Constitutional powers under Article 142 of the Constitution of India but such powers are not available to the High Courts and the other Civil Courts. Moreover, the limited scope of the present revisional application is to determine whether the order impugned whereby all further proceedings of Misc. Case No.13 of 2022 have been stayed is proper or not. The said judgments therefore do not help the opposite party at all.

17. For all the reasons aforesaid, the impugned order dated December 15, 2025 by which all further proceedings of Misc. Case No.13 of 2022 pending before the learned Additional District and Sessions Judge, Fast Track Court – II, Sealdah, South 24-Parganas deserves interference. The same stands set aside. The proceedings of Misc. Case No.13 of 2022 will therefore continue.
18. C.O. 1013 of 2026 stands disposed of with the

above observations. No costs.

19. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)