

25.02.2026
SL No.17
Court No.6
(gc)

CO 2565 of 2025

**Sri Prabir Kumar Saha
Vs.
Smt. Soma Saha nee Kar**

Mr. Buddhadeb Ghoshal, Sr. Adv.,
Mr. Jayanta Kumar Datta,
Mr. Saikat Saha Banik

.....for the Petitioner.

1. The petitioner is the husband in Matrimonial Suit No.98 of 2011 (MAT Suit No.1605 of 2014). The petitioner is aggrieved by the order dated February 13, 2025. The learned Court rejected the application under Order 16 Rule 10A(1) read with Section 151 of the Code of Civil Procedure and refused a DNA test of the son's sample for matching with the DNA sample of the petitioner.
2. The Court relied on the provisions of Section 112 of the Evidence Act which provided that birth during marriage was conclusive proof of legitimacy of the child if the child was born during the continuation of a valid marriage between his mother and any man or within 280 days after dissolution of marriage, the mother remaining unmarried. In the present case, the marriage was solemnized on August 16, 2003 and the child was born on June 2, 2004, i.e., after 287 days of marriage. The learned Court was of the view that the child was presumed to be a legitimate son of the petitioner.

3. I do not find any irregularity in the order impugned.

The husband has stated in his application that marriage was solemnized on August 16, 2023 in the Kalighat temple and the son was born on June 2, 2024. The pregnancy test (urine sample) was made on October 27, 2023 which came positive and the child was born after 8 months 7 days without cesarean section. This is a suit for divorce on the ground of cruelty and desertion. It is for the petitioner to prove cruelty and desertion by leading evidence. At this stage, allowing such an application would amount to fishing out evidence. This is not a suit for divorce on the ground of adultery. Moreover, the child was born in 2004 and the application for divorce was filed on 2014, that is, after 10 years. The father did not raise any objection with regard to the legitimacy of the child during the subsistence of marriage. Only in the petition for divorce he expressed a doubt about the paternity of the child.

4. Under such circumstances, the revisional application is dismissed.

5. There shall be no order as to costs.

6. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)