17
06.10.2026
Court No. **652**
D.Hira

CO 3977 of 2025

Jayanta Hazra
Vs.
Shilpa Ojha

Mr. Ayan Banerjee,
Mr. A. Chowdhury.
... for the petitioner

Mr. Amit Ranjan Pati,
Ms. Swastika Chowdhury,
Ms. Ilika Nag,
Mr. Avijit Chatterjee.
... for the OP

1. The matter was sent for mediation. The Hon'ble Mediator has informed vide letter dated 18th September, 2026, from which it transpires that the mediation has failed.

2. Copy of the letter of the Hon'ble Mediator has been submitted in Court by Mr. Ayan Banerjee, learned advocate for the petitioner. Let the same be taken on record.

3. The instant revision is directed against the order dated 7th August, 2025 of the learned Additional District Judge, Fast Track Court – II, Howrah in Matrimonial Suit No. 624 of 2022 with Misc. Case No. 100 of 2025.

4. The said order is challenged on the ground that by applying a wrong test under the law, the Court has come to an erroneous finding, which is unsustainable in the eye of law. The Court's finding in the said impugned order inter alia is that the proceedings in the matrimonial suit of the present petitioner/husband should be stayed in view of pendency of the miscellaneous case under Section 36 of the Special Marriage Act, filed by the opposite party/wife in connection

with the said matrimonial suit and the financial indigence faced by the wife due to such pendency of the court case. The Court noted that the burden of the husband to prove in the misc case as to why the wife's statements should not be believed, could not be discharged by him.

5. This Court has no difference of opinion, when Mr. Banerjee, learned advocate for the petitioner, points out to the law settled in this regard.

6. Mr. Banerjee, learned advocate for the petitioner submits that on the basis of the ratio decided in the judgment of this Court in ***Sikha Gorai vs. Subodh Chandra Gorai*** reported in ***(2003) 3 CHN 599*** the test is whether the husband has failed to comply any order of maintenance in pending the suit or costs to be paid as directed by the Court to the wife. He submits that only in that case the Court would proceed to stay the entire proceedings in the suit and shall only proceed subject to the husband complying with the order of maintenance etc. granted by the Court.

7. In the impugned order dated 7th August, 2025, the learned Additional District Judge, Fast Track Court – II, Howrah appears to have considered that the burden lies on the husband to show as to why the suit should not be stayed in view of the financial stringency of the wife, which amounts to be wrong test having been applied to direct for stay of all proceeding in the suit itself. Admittedly the Misc. Case is yet to be adjudicated by the Court. Evidently also, the Court in the said impugned order has not recorded wilful and deliberate violation of any order of Court for payment to the wife by the husband. Therefore, it appears only to be a premature stage, for the Court to stall the entire procedure in the matrimonial suit, as per the

settled legal position. Ratio is ***Sikha Gorai's case (supra),*** is a perfect support in this regard, to the case of the present petitioner, which the Court also failed to appreciate.

8. As such, the impugned order dated 7th August, 2025 cannot sustain.

9. However, the Court finds that the matrimonial suit has been pending before the Court for quite some time now. The wife has filed an application under Section 36 of the Special Marriage Act in connection therewith and her financial difficulties are recorded by the Court in the said impugned order dated 7th August, 2025, which as an independent fact, cannot be considered as improbable altogether.

10. In such circumstances, let this revision be disposed of directing the learned Additional District Judge, Fast Track Court – II, Howrah to dispose of the Miscellaneous Case No. 100 of 2025 in connection with Matrimonial Suit No. 624 of 2022, positively within a period of four weeks from the date of reopening of the ensuing Puja vacation, after affording adequate and reasonable opportunity of hearing to both the parties.

11. In view of the discussions as above, the impugned order dated 7th August, 2025, directing the stay of further proceedings in the matrimonial suit as above, is hereby set aside.

12. However, the Court shall be at liberty to take appropriate steps in accordance with law, in case an order of maintenance is passed in the misc. case as above and any latches or negligence of the husband is noted by the Court in compliance therewith.

13. Let the learned Additional District Judge, Fast Track Court – II, Howrah be further requested to proceed in the suit as expeditiously as possible.

14. With the aforesaid observations and directions, **CO No. 3977 of 2025** is **disposed of**.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)