(2010) 11 CAL CK 0038

Calcutta High Court

Case No: C.O. No. 1396 of 2010

Soumitra Roy		APPELLANT
	Vs	
Munmun Roy		RESPONDENT

Date of Decision: Nov. 24, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 32 Rule 15
- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Special Marriage Act, 1954 - Section 12, 13, 24, 27, 36

Citation: (2011) 3 CHN 632 : (2011) 2 DMC 96

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Priyobrata Mukherjee, for the Appellant;D. Mukherjee, Debjit Mukherjee and Partha Ganguly, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.
This application is at the instance of the husband and is directed against the order dated February 15, 2010 passed by the learned Additional District Judge, Fifth Court, Howrah in Misc. Case No. 1 of 2008 arising out of the Matrimonial Suit No. 644 of 2007.

2. The short fact is that the husband filed a matrimonial suit being Matrimonial Suit No. 644 of 2007 u/s 24 alternatively u/s 27 of the Special Marriage Act/or u/s 12 alternatively u/s 13 of the Hindu Marriage Act.

In that suit, the wife/opposite party herein appeared and filed an application u/s 36 of the Special Marriage Act praying for alimony. The husband/Petitioner filed a written objection against that petition and the application for alimony has been numbered as Misc. Case No. 1 of 2008 which is pending for decision. In that misc. case, the evidence on behalf of the wife was being recorded. During her cross-examination, the husband/Petitioner herein

filed an application for determining whether the wife/opposite party is a person of unsound mind. That application was kept with the record by the impugned order with the observation that the application should be considered after cross-examination of the wife in the misc. case. Being aggrieved by the impugned order, this application has been preferred.

3. The question that arises for decision in this application is that if the learned Trial Judge is justified in keeping the application under Order 32 Rule 15 of the CPC pending without taking the same first for decision.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the husband/Petitioner filed the said matrimonial suit against the wife. On inquiry, it is learnt that at the time of filing of the said matrimonial suit, the husband did not describe the Respondent as a person of unsound mind. He filed the said suit as if the wife is a person of sound mind. During inquiry, it also revealed that the wife filed an application u/s 125 of the Code of Criminal Procedure and an order of maintenance was granted in favour of the wife. In that case, the husband did not take the stand that the wife is a person of unsound mind. Even against the application filed by the Petitioner for alimony, the husband filed a written objection stating various grounds to defend his stand to resist the claim for alimony, but he never stated that the wife is a person of unsound mind. While the cross-examination of the wife was going on, the husband filed the application stating that the wife is a person of unsound mind and so an inquiry was to be held first whether the wife is a person of unsound mind. In support of his contention, the applicant has filed a number of prescriptions of a Neuro Psychiatrist to show that the wife is under treatment of a doctor since for a long time even prior to the date of marriage. Thus, Mr. Mukherjee, appearing for the Petitioner, submits that unless it is determined under Order 32 Rule 15 of the CPC whether the wife is a person of unsound mind, the matrimonial proceeding cannot proceed and the wife cannot get any order of alimony.

5. The husband has filed such application at a time when further cross-examination of the wife was being done. So, it could well be presumed that such a course was adopted only to avoid payment of alimony. It is not a matter of consideration at present that the wife is getting maintenance as per order of the learned Magistrate in a proceeding u/s 125 of the Code of Criminal Procedure If any amount is being paid in that proceeding, such payment of maintenance shall be considered at the time of disposal of the application for alimony and litigation costs. Anyway, since the application for alimony has been filed to have maintenance and the litigation costs to defend the suit filed by the husband, I am of the view that the learned Trial Judge has rightly observed that the application should be kept with the record for the time being till the cross-examination of the wife is over. I think proper order would have been to note that such application under Order 32 Rule 15 of the CPC should be considered after disposal of the application for alimony and litigation costs. It may be noted herein that the application for alimony was filed on January 24, 2008 and the application under Order 32 Rule 15 of the CPC by the husband was filed on

January 7, 2010, i.e., almost after lapse of two years when the learned Trial Judge was to dispose of the application for alimony and litigation costs shortly. Therefore, the learned Trial Judge need not give any priority to the said application under Order 32 Rule 15 of the Code of Civil Procedure. That application shall be disposed of in due course after disposal of the application for alimony and litigation costs. So, the learned Trial Judge shall make all endeavors to dispose of the application for alimony and litigation costs as early as possible.

Thereafter, he shall take up the application under Order 32 Rule 15 of the CPC for disposal in accordance with law.

6. This application is, therefore, disposed of in the manner as indicated above.

7. Considering the circumstances, there will be no order as to costs.

8. Urgent Xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.