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Ramola Banerjee Vs Sandip Banerjee

Civil Order No. 1559 of 1992

Court: Calcutta High Court

Date of Decision: Feb. 9, 1994

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 23 Rule 3, Order 3 Rule 4, 151#Hindu Marriage Act, 1955 â€" Section 24

Citation: (1996) 2 ILR (Cal) 83

Hon'ble Judges: S.K. Mookherjee, J; N.K. Bhattacharjee, J

Bench: Division Bench

Advocate: Santanu Mukherjee and Niranjan Majumdar, for the Appellant;Tapan Dutta, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Mookherjee, J.
The present Revisional application is at the instance of the wife and directed, against an order passed by the learned

Additional District Judge, Howrah, on February 28, and March 30, 1992, in Matrimonial Suit No. 188 of 1991, whereby the application u/s 24 of

the Hindu Marriage Act was disposed of by learned Additional District Judge on the basis of a consent order by fixing an amount of monthly

alimony at Rs. 500 payable with effect from October 1991 and litigation cost at Rs. 800 and by rejecting the application made u/s 151 of the CPC

on behalf of the wife, inter alia, with a prayer for substitution of the words "on consent" by the words "on contest".

2. Appearing on behalf of the Petitioner wife, Mr. Mukherjee has raised a contention that even accepting the order passed by the learned

Additional District Judge to have been passed on consent, the same could not have any enforceability in view of non-conformance to requirement

of Order 23 Rule 3 of the Code of Civil Procedure. According to Mr. Mukherjee, the agreement should have been in writing and signed by the

parties.

3. Mr. Tapan Dutta, appearing on behalf of the husband opposite party, has raised a twofold contention. In the first place, he has contended that

question of payment of alimony pendente lite or litigation cost arises at an interlocutory stage and as interlocutory matter does not require

conformance to the provision of Order 23 Rule 3 of the CPC as argued by Mr. Mukherjee, inasmuch as according to Mr. Dutta, such

conformance would be required, where the whole suit is disposed of and a decree comes into existence on the basis of such compromise.

According to Mr. Dutta, settlement of an interlocutory dispute can be accepted even on the basis of oral statements made by the Counsel for the

contesting or consenting parties. Secondly, Mr. Dutta has argued that once the giving of consent by or on behalf of the wife is factually found to be

correct, the Petitioner cannot get any relief in equity jurisdiction by going back on such consented order. The Revisional application, therefore,

must fail, at least on that ground. Thirdly, according to Mr. Dutta, there is no error of jurisdiction committed by the learned Additional District

Judge in passing the impugned order and, as such, question of interference in exercise on Revisional jurisdiction cannot arise.

4. We have given our anxious consideration to the rival contentions raised. In spite of the detailed arguments as noted by us hereinabove, we have

to remain conscious that we are exercising a jurisdiction in equity. The substantive order dated February 28, 1992, is an order "on consent". The

authority of a Counsel to agree to an order in terms of Order 3 Rule 4 of the CPC is well-settled. In this particular case there is an additional fact

that before us the factum of consent was accepted but contention was raised challenging the legal enforceability of the consent order in view of the

provision of Order 23 Rule 3 of the Code of Civil Procedure. From the Revisional application before us also we do not find any averment assailing

any mistaken recording on the part of the Court. There is also no challenge in the substantive part of the application to the order dated March 30,

1992. We are accordingly disinclined to allow such a contention to be raised after having consented to the substantive order.

5. In the result, the Revisional application fails and is dismissed. There will be, however, no order as to cost. Hearing of the suit is expedited.

N.K. Bhattacharjee J.

6. I agree.