

MISC. CASE No. 2 of 2017.

Computer Registration No.2/2017

Amrita Dutta.....petitioner/Wife.

-Versus-

Prodip Kumar Dutta.....O.P./Husband.

Order No.14 dt.26.03.2018:

To day is fixed for hearing of the petition filed under Order 9 Rule 13 of C.P.C. Supported by affidavit by the petitioner Amrita Dutta dated 28.02.2017 against the husband/O.P. Prodip Kumar Dutta, praying for restoration of the order dated 10.01.2012, passed in the Matrimonial Suit No.142 of 2010, filed by the O.P. of this Misc. Case against the petitioner of this Misc. Case under Section 13 of the Hindu Marriage Act, supported by an affidavit, seeking dissolution of his marriage with the petitioner of this Misc. Case No.2 of 2017 arising from Matrimonial Suit No.142 of 2010.

The impugned order dated 10.01.2012 passed in Matrimonial Suit No.142 of 2010 revealed that this Learned Court was pleased to determined the Matrimonial Suit No.142 of 2010 decreed exparte against the O.P. of the said Matrimonial Suit, Amrita Dutta and the Learned Court, by the order dated 10.01.2012 was pleased to grant exparte decree in favour of the petitioner/husband, of the Matrimonial Suit No.142 of 2010, Prodip Kumar Dutta and dissolved by the exparte decree, the marital tie existed in between Prodip Kumar Dutta and Amrita Dutta, as per scopes of section 13 of the Hindu Marriage Act.

The case record of Matrimonial Suit No.142 of 2010 reveals that on the same date, ie., on 10.01.2012 exparte decree was prepared and signed by the Learned Court and against that exparte decree of dissolution of marriage passed in favour of Pradip Kumar Dutta in Matrimonial Suit No.142 of 2010. The O.P. of the said Matrimonial Case, Amrita Dutta preferred this instant application under Order 9 Rule 13 of C.P.C. Dated 28.02.2017 supported by an affidavit together with separate petition under Section 5 of the Limitation Act

Contd.....p/2

Misc. Case No.2/2017 (Comp. Regd. No.2/17)**Contd. Order No.14 dated 26.03.2018:**

dated 28.02.2017, praying for restoration of the impugned order dated 10.01.2012, passed in Matrimonial Suit No.142 of 2010, mainly on the ground that she was completely kept in dark by the petitioner/husband and his lawyers about the fate of the said Matrimonial Suit No.142 of 2010, though she had contested in the said Matrimonial Suit as the O.P./wife.

It is her specific assertion that since she was advised by the Learned Counsel for the petitioner of Matrimonial Suit No.142 of 2010, Prodip Kumar Dutta that she would not be required further to attend the proceeding of the said Matrimonial Suit No.142 of 2010 in the Learned Court, so she had accepted that advice on good faith and abstained from attending the proceeding of Matrimonial Suit No.142 of 2010 knowing that the matter of matrimonial discord has been solved amicably and she began to reside, kept close contact with the petitioner of the Matrimonial Suit No.142 of 2010, Prodip Kumar Dutta.

It is the submission of the Learned Counsel of the O.P./petitioner of this Misc. Case No.2/17, Amrita Dutta that she could come to know being the O.P. of Matrimonial Suit No.142 of 2010 about the result of Matrimonial Suit No.142 of 2010 only on 03.02.2017 when she was not allowed to get entry in her matrimonial residence by her husband Prodip Kumar Dutta, exclaiming that his marital tie with the O.P. of this Misc. Case No.2/17, Amrita Dutta has been dissolved by exparte order of decree passed by the Learned Court below in Matrimonial Suit No.142 of 2010 on 10.01.2012.

The Learned Counsel for the O.P. of this Misc. Case has submitted that Matrimonial Suit No.142 of 2010 was regularly contested by the O.P. of the said Matrimonial Suit No.142 of 2010, Amrita Dutta, ie., the petitioner of this Misc. Case and on her own accord she did not proceed further in the said Matrimonial Suit No.142 of 2010, as the O.P. of the said Matrimonial Suit and

Misc. Case No.2/2017 (Comp. Regd. No.2/17)

Contd. Order No.14 dated 26.03.2018:

finally the Learned Court, finding no other alternative and noticing the disinterestedness of the O.P. of the said Matrimonial Suit No.142 of 2010, Amrita Dutta, in contesting the said Matrimonial Suit, passed the impugned order No.11 dated 10.01.2012 in Matrimonial Suit No.142 of 2010 ~~ex~~^{ex}parte and decreed the said ~~ex~~^{ex}parte in favour of the petitioner/plaintiff of the said Matrimonial Suit No.142 of 2010, ie., Prodip Kumar Dutta and by the said ~~ex~~^{ex}parte decree of divorce, Ld. Court dissolved the marital tie so existed in between the said Matrimonial Suit, Prodip Kumar Dutta and the O.P. of the said Matrimonial Suit, Amrita Dutta and the order was passed ~~ex~~^{ex}parte and the marriage of the contesting parties of the Matrimonial Suit No.142 of 2010 was dissolved by a decree of divorce passed by the Learned District Judge in Matrimonial Suit No.142 of 2010 vide order No.11 dated 10.01.2012.

By submitting the said proposition, Learned Counsel for the O.P. of this Misc. Case, Prodip Kumar Dutta has prayed for rejection of the instant Misc. Case summarily, since the petitioner of this Misc. Case, Amrita Dutta being the O.P. of Matrimonial Suit No.142 of 2010 cannot have any legitimate ground to secure the order of restoration of the ~~ex~~^{ex}parte order of Matrimonial Suit No.142 of 2010, passed by the Learned Court on 10.01.2012.

I have given thorough consideration to the materials on record, submissions of both sides, the petition under Order 9 Rule 13 of C.P.C. Supported by an affidavit along with a separate petition filed under Sec.5 of the Limitation Act, pressed by the Ld. Counsel for the petitioner of this Misc. Case, Amrita Dutta. I have also gone through the content of the written objection, filed by the Ld. Counsel for the O.P. of this Misc. Case, Prodip Kumar Dutta dated 07.11.2017, on consideration of the materials fact and relevant documents it could be noticed that the contesting parties of this suit had many litigations in between them over the issue of their matrimonial discords and

Misc. Case No.2/2017 (Comp. Regd. No.2/17)

Contd. Order No.14 dated 26.03.2018:

the case record reveals that it is the O.P. of this Misc. Case, Prodip Kumar Dutta who had filed a Matrimonial Suit No. 133 of 2007 under Sec.9 of the Hindu Marriage Act, seeking restitution of conjugal life of himself with his wife Amrita Dutta and that suit filed under Sec.9 of the Hindu Marriage Act by Prodip Kumar Dutta was dismissed for default. Subsequently, Prodip Kumar Dutta had instituted Matrimonial Suit No.142 of 2010 under Sec.13 of the Hindu Marriage Act against the O.P. of the said Matrimonial Suit, ie., against the petitioner of this Misc. Case, Amrita Dutta, seeking dissolution of his marriage existing with her and that suit proceeded.

It further transpires that during the continuation of Matrimonial Suit No.142 of 2010, the petitioner of this Misc. Case, Amrita Dutta, being the wife of the O.P. of this Misc. Case, Prodip Kumar Dutta filed a separate Matrimonial Suit No.68 of 2008 under Sec.9 of the Hindu Marriage Act and the said suit continued simultaneously with the Matrimonial Suit No.142 of 2010, contested in the said Court on different dates. Therefore, it appears that against the Matrimonial Suit No.142 of 2010 filed by Prodip Kumar Dutta against his wife Amrita Dutta under Section 13 of the Hindu Marriage Act, seeking dissolution of his marriage with his wife, his wife filed a separate Matrimonial Suit under Section 9 of the Hindu Marriage Act against him, praying for restitution of her conjugal life with Prodip Kumar Dutta.

It further transpires that during the existing of the Matrimonial Suit No.142 of 2010, the petitioner of the said Matri. Suit Prodip Kumar Dutta had never referred in the proceeding of Matrimonial Suit No.68/2008, filed against him by his wife Amrita Dutta under Section 9 of the Hindu Marriage Act that he had already filed Matrimonial Suit No.142 of 2010 against her and that suit has been proceeding and it further transpired that he had taken ample time, without any cogent reason and basis, to adjourn the proceeding of Matrimonial Suit No.68 of 2008, filed against him by his wife under Sec.9 of

Misc. Case No.2/2017 (Comp. Regd. No.2/17)

Contd. Order No.14 dated 26.03.2018:

the Hindu Marriage Act and in that process delayed intentionally the proceeding of the said Matrimonial Suit filed and pending against him under Sec. 9 of the Hindu Marriage Act from the end of his wife Amrita Dutta and finally after the pronouncement of the judgment of Matrimonial Suit No.142 of 2010, in favour of the petitioner of the said Matrimonial Suit, Prodip Kumar Dutta, he proceeded further in the said Matrimonial Suit No.68/2008 against the petitioner of the said particular Matrimonial Suit No.68/2008, Amrita Dutta and in that proceeding, at that time too, ie., even after the pronouncement of the exparte decree of the Matrimonial Suit No.142 of 2010 in favour of him, the said Prodip Kumar Dutta being the O.P. of Matrimonial Suit No.68/2008, never agitated before the Learned Court in the said proceeding of Matrimonial Suit No.68/2008 that he had procured the exparte decree of dissolution of his marriage against his wife, ie., the petition of the said Matrimonial Suit No.68/2008, Amrita Dutta^{or} for for that reason said Matrimonial Suit No.68/2008 has got no leg to stand upon.

Without doing so by making material concealment of the result of the exparte decree of Matrimonial Suit No.142 of 2010, passed in his favour, he continued with the proceeding of Matrimonial Suit No.68/2008 as the O.P. against his wife Amrita Dutta to resist her petition filed under 9 of the Hindu Marriage Act in the said Matrimonial Suit No.68/2008, just to kill time, and for that process misguided, not only the Learned Court that was dealing with Matrimonial Suit No.68 of 2008, but also Amrita Dutta and in that process he had caused intentional delay so that Amrita Dutta can not file petition under Order 9 Rule 13 of C.P.C. for restoration of Matrimonial Suit No.142 of 2010 as early as practicable and further so that she may remain engaged in Matrimonial Suit No.68 of 2008 in full swing, without knowing the truth of the fate of Matrimonial Suit No.142 of 2010, decided exparte against her.

Misc. Case No.2/2017 (Comp. Regd. No.2/17)**Contd. Order No.14 dated 26.03.2018:**

In that process Prodip Kumar Dutta had been concealing material fact intentionally by his taking part in the proceeding filed by Amrita Dutta in the form of Matrimonial Suit No.68 of 2008, where she had been wanting restoration of her marriage with him.

This concealment of fact is one kind of cheating perpetrated by the O.P. of this Misc. Case, Prodip Kumar Dutta against not only the concerned Learned Court, but also against the O.P. of the Matrimonial Suit No.142 of 2010 as well as the petitioner of Matrimonial Suit No.68 of 2008 and in that process this attitude of Prodip Kumar Dutta had lent sufficient ground to hold that his wife Amrita Dutta was correct in reflecting that she was kept completely in the dark ^{by him} as to the result of Matrimonial Suit No.142 of 2010, though she had, according her capacity, been trying to contest in the Matrimonial Suit No.142 of 2010, which she later could not continue presumably on the assurance given to her, prima facie at the instance of her husband, in respect of fate of Matrimonial Suit No.142 of 2010.

Having regard to this and considering the submissions of both sides, I do not find any cogent reason to refuse the application filed under Order 9 Rule 13 of C.P.C. Pressed by Amrita Dutta, seeking restoration of the Matrimonial Suit No.142 of 2010 to its original file and number and to initiate the proceeding of the said Matrimonial Suit No.142/2010 from the point which appears to be correct in the proceeding of the Matrimonial Suit.

In the premises it is

ORDERED

Accordingly, on hearing both sides, the instant application filed under Order 9 Rule 13 of C.P.C. Is allowed on ^{Contest,} merit with cost of Rs.1,000/- (Rupees One Thousand) only, half amount of which is to be paid by Prodip Kumar Dutta towards D.L.S.A., of this district and the rest half of the said cost to be given to the petitioner of this Misc. Case, by Prodip Kumar Dutta, ie., the O.P. of this Misc. Case towards the petitioner of this Misc. Case, Amrita Dutta, within

Misc. Case No.2/2017 (Comp. Regd. No.2/17)**Contd. Order No.14 dated 26.03.2018:**

fifteen days from the pronouncement of this order on contest.

Accordingly, the instant Misc. Case is allowed on contest on merit.

Let the Matrimonial Suit No.142 of 2010 be restored to its original file and number for hearing.

The impugned order passed in Matrimonial Suit No.142 of 2010 dated 10.01.2012 in which the said suit was decreed exparte stands set aside *on contest.*

Both the parties are directed to appear before this Court on **09.04.2018**.

To **09.04.2018** is fixed for appearance and necessary order *in Mat/suit no 142/10 in the D. Consensus Court of law.*

Dict. & corr. by me.

for

D.J.

*Sudeb Mitra -
27.3.18*

Sudeb Mitra)

District Judge,

Dakshin Dinajpur at Balurghat.

