

Mat Suit no. 123 of 2019

Order no. 19
Dated, 25.08.2022

Both the parties file hazira.

The record is taken up for order on the petition dated, 22.07.2022 filed by the respondent / husband Tusar Gain u/s 10/11 read with sec. 151 of Code of Civil Procedure. Perused the petition and other materials on record. Considered.

In the instant petition, the respondent alleged that after filing the instant case, the petitioner had filed another divorce proceeding u/s 13B of the Hindu Marriage Act on 13.12.2019 praying for a decree of divorce on mutual consent. That the respondent was ignorant about the instant case and the petitioner approached him for a divorce on mutual consent.

That on 20.03.2021 the case filed u/s 13B of the Hindu Marriage Act was dismissed for default. It is accordingly, submitted that the instant case is not maintainable u/s 10/11 read with section 151 of Code of Civil Procedure.

The petitioner did not file any written objection against this petition. But the Ld. Advocate appearing on behalf of the petitioner submitted that he was ignorant about the petition u/s 13B of Hindu Marriage Act filed by the petitioner.

The respondent has filed copies of the order sheet in Mat Suit no. 484/2019 u/s 13B of the Hindu Marriage Act filed by the petitioner on 13.12.2019. It appears from the order sheet that by order dated, 20.03.2021 the said suit was dismissed for default by the Ld. A.D.J. Basirhat since the petitioner did not turn up.

From the order sheet of the instant case, it appears that this case u/s 13(1)(ia)(ib) of the Hindu Marriage Act was filed on 26.11.2019 i.e. prior to the case u/s 13B of the Hindu Marriage Act filed by the petitioner. The respondent entered appearance in this case on 19.03.2021 i.e. prior to the dismissal of the case u/s 13B of Hindu Marriage Act.

So, it is clear from the available materials that the instant case u/s 13(1)(ia)(ib) of Hindu Marriage Act praying for a decree of divorce on the ground of cruelty and desertion was filed prior to the case u/s 13B of the Hindu Marriage Act filed by both the parties seeking divorce by mutual consent. Since this is the previously instituted suit between the parties section 10 of Civil Procedure Code is not applicable.

Moreover, I find that issues involved in this two suits are different and subsequent suit filed u/s 13B of Hindu Marriage Act was dismissed for default and not on merit. Such being the position, I am

of the considered opinion that the principle of res-judicata as laid down u/s 11 C.P.C. is also not applicable here.

I also do not find this to be a fit case where the court should invoke its inherent power to non suit the petitioner who is seeking a decree of divorce on cruelty and desertion.

In view of the reasons stated above the instant petition filed by the respondent is rejected on contest without cost.

The respondent is directed to file written statement positively by the next date failing which the case shall be heard exparte.

To 05.12.2022 for filing W.S. I.d. necessary order.

D/C

Additional District Judge,
Fast Track 3rd Court, Basirhat

