

CNR No: WBSP01-002834-2018
Present: Subhra Som Ghosal
J.O Code: WB00984
MAT Suit No: 532 of 2018

Order No. 56 dated: 07-02-2024.

Both parties to the suit are present by filing their respective haziras.

As stipulated by the previous order, today's fixed for hearing of the petition dated 08-07-2022 filed by the respondent/wife praying for stay of all further proceeding of this Matrimonial Suit.

On-call Learned Advocates for both the parties are found to be present. Hence the case record is taken up for hearing.

Learned Advocate for the respondent/wife in resonance to the petition submitted that the respondent being the estranged wife of the petitioner has filed the petition under Section 24 of the Hindu Marriage Act, 1955 and such petition has been registered as Misc. case being No. 161 of 2019 and is pending for adjudication. It was also submitted that the petitioner/husband has not paid any maintenance to the respondent/wife. Maintaining on this; it was submitted by the Learned Advocate for the respondent/wife that the hamstrung by paucity of resources, the respondent is finding it very difficult to proceed with the Matrimonial Suit and this suit needs to be stayed until that particular Misc. Case is finally disposed. In order to bolster his contention, the Ld. Advocate for the respondent/wife relied on the decision of the Hon'ble High Court reported in Sunil Bansal vs Meeta Bansal, 2018 (4) ICC 48 (Cal).

The learned advocate for the petitioner/husband raised cavil to such prayer, and in all his fairness; submitted that necessary order as per law laid down by the Hon'ble High Court may be passed.

I have meticulously inspected the case record staying alive to the points mooted before me.

It has transpired from the case record that the respondent/wife filed a petition on 9th December 2021 praying for stay but in such petition due to typographical error "Misc Case" was mentioned. Thereafter on 8th July 2022 the respondent/wife filed a petition praying for correction of such typographical error. While both the petitions were pending for adjudication, the respondent/wife filed another petition praying for stay of the present Matrimonial Suit; till disposal of the Misc. Case initiated by the respondent/wife under section 24 Hindu Marriage Act, 1955. Such petition is under adjudication in this order. In view of this petition, the previous two petitions filed by the respondent/wife has become redundant, as effective adjudication of the petition which is now being considered will suffice the cause for the respondent/wife. In view of such fact the previous two petitions i.e. the petition dated 9th December 2021 and the subsequent petition praying for correction of such petition stands disposed of accordingly.

Now it will be pragmatic to take up the petition dated 08th July 2022 for adjudication.

It is axiomatic from the case record that the petitioner/husband initiated the Matrimonial Suit praying for dissolution of the marriage invoking Section 13 of the Hindu Marriage Act, 1955. In such proceeding the respondent/wife after her appearance filed an application under Section 24 of the Hindu Marriage Act, 1955 and such petition has been duly registered as Misc. Judicial Case and has been numbered as 161 of 2019. In such proceeding affidavit of assets and liabilities have already been filed and the case is now pending for final hearing. It is not the case that the petitioner/husband is paying any maintenance to the respondent/wife. In this backdrop it will be assuredly profitable for this Court to fumigate my mind with the following observations of the Hon'ble High Court in Mitali Deb v. Nirupam Das, (Calcutta) : Law Finder Doc Id # 2147852 : 2023 (1) HLR 471 which has reiterated the finding of the Hon'ble High Court in Sunil Bansal vs Meeta Bansal, 2018 (4) ICC 48 (Cal). The relevant part observations run in the following lines:

"7. Having considered the submission Having considered the submission of both sides, it appears that it is no longer res integra that application praying for alimony pendente lite should be disposed of with utmost expedition providing an opportunity of hearing to fighting couple. 8. The litigation cost is a significant component within the meaning of alimony pendente lite, so as to set up defence properly upon incurring incidental expenses for the purpose.

9. When it is the specific submission disclosed by the petitioner that in the absence of litigation cost being granted, it would be quite impracticable to insist upon the defending spouse to file written statement, the court below should proceed to decide the petition

praying for alimony pendente lite with utmost expedition, before venturing upon returning decision in connection with the ex parte hearing of the suit already set by the court below.

10. It is not the case of the petitioner, presented by the wife that she is not willing to contest the case upon filing written statement, but it is for the financial distress, allegedly suffered by the petitioner/wife, the written statement could not be filed earlier, doing adherence to Order 8, Rule 1 C.P.C."

No further elaboration in context with the point raised is necessary. Hence the prayer as submitted by the respondent/wife by petition dated 08/07/2022 stands allowed. The present Matrimonial Suit shall remain stayed till the Misc. Case being No. 161 of 2019 is finally disposed of.

B.C-II is directed to take note of the fact in all concerned registers as well as in the CIS. A copy of this order in PDF/PDFA format be uploaded to the server following the modalities of Rule 121A of the Civil Rules and Order of the Hon'ble High Court [since amended by Notification No. 131-G dated 15-01-2015].

Typed to the dictation directly;
corrected on the system.

Sd/-Subhra Som Ghosal

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Additional District and Sessions Judge,
01st Court, Alipore, South 24 parganas.

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