

**CIRCUIT BENCH OF CALCUTTA HIGH COURT  
AT JALPAIGURI**

**10.04.2024**  
Court No.01  
rpan/01

**FAT 05 of 2024**

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CAN 1 of 2024

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CAN 2 of 2024

**Sri Niloy Mazumder @ Nilay Majumder**

– *Versus* –

**Smt. Popy Mazumder (Ghosh)**

Mr. Amales Roy,  
Mr. Deborshi Dhar,  
Mr. Nigam Mittal,  
Ms. Oshmita Mukherjee  
... for the Appellant.

The present appeal has been preferred challenging the judgment dated 12<sup>th</sup> September, 2023 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Siliguri in Mat. Suit No.36 of 2008 dismissing the suit and imposing a cost of Rs.5,00,000/- upon the appellant/husband. In connection with the said appeal an application for stay, being CAN 1 of 2024 has been filed.

Mr. Roy, learned advocate appearing for the appellant/husband submits that the impugned direction towards imposition of costs does not stand supported with appropriate reasons. The respondent/wife has already preferred a Misc. Case No.1 of 2024 in connection with the Mat. Suit No.36 of 2008 praying for issuance of an order of execution for realisation of the said amount of Rs.5,00,000/- and the

said matter has been fixed for hearing on 12<sup>th</sup> April, 2024.

He further submits that unless the impugned direction towards payment of cost is stayed, the appellant would suffer irreparable loss.

Costs are at the discretion of the Court. *Prima facie*, it appears that without arriving at any finding that the appellant had approached the court with unclean hands or had suppressed material facts the learned court below had directed the appellant to pay an amount of Rs.5,00,000/-. The date of hearing of the Misc. Case No.1 of 2024 is also fixed on 12<sup>th</sup> April, 2024.

In view thereof, the direction towards payment of cost of Rs.5,00,000/- [Rupees Five Lakh only] shall remain stayed for a period of eight weeks from date or until further orders, whichever is earlier.

In connection with the present appeal, the appellant has also filed another application, being CAN 2 of 2024 under the provisions of Order 41 Rule 27 of the Code of Civil Procedure.

The appellant is directed to serve copies of both the applications, being CAN 1 of 2024 and CAN 2 of 2024 upon the respondent/wife within a week from date and to affirm an affidavit-of-service on the returnable date.

The respondent/wife would be at liberty to file affidavits-in-opposition to both the applications within a period of two weeks from the date of communication of this order. Replies thereto, if any, be filed within a week thereafter.

List the matter for further consideration before the next available Circuit Bench.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

**(Biswaroop Chowdhury, J.)(Tapabrata Chakraborty, J.)**