

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

**FAT 8 of 2023
IA No. CAN 1 of 2023**

**Sri Jayanta Kumar Paul
Vs.
Smt. Piyali Saha (Paul).**

**Dr. Navin Barik,
Mr. Sandip Majumdar,
Ms. Esha Acharya.**

... for the appellant.

**Mr. Nripen Das,
Mr. Debanjan Das.**

... for the respondent.

Re: CAN 1 of 2023

The instant application is taken out by the husband/appellant not only seeking stay of the operation of the order but also stay of the portion of the order by which the trial court imposed costs to the tune of Rs. 1,00,000/- to be paid within a specified time.

A suit for dissolution of marriage under Section 13 of the Hindu Marriage Act was instituted by the husband/appellant on the ground of cruelty and desertion. The husband/appellant could not prove the allegation of the desertion and/or cruelty, which constrained the trial court to dismiss the said suit.

We do not find any reason for imposition of such hefty costs despite the existence of the provisions contained under Section 35 and 35A of the Code of Criminal Procedure.

Whether the Court can exercise the inherent power enshrined under Section 151 of the Code in departure from the specific provisions contained in the Code is a matter to be decided at the time of hearing of the instant appeal.

We, therefore, dispose of the instant application with a direction that there shall be stay of operation of the judgment and order by which the costs to the extent of Rs. 1,00,000/- was imposed upon the husband/appellant till the disposal of the instant appeal.

Since the sole respondent has entered appearance by filing a Vakalatnama vide Filing No. A-524 dated 4th August 2023, the appeal shall be treated ready as regards service. Let the Vakalatnama filed by the respondent be tagged with the instant appeal.

Let the Lower Court's Records be called for through the Special Messenger at the cost of the husband/appellant. Such cost shall be put in within a week from date.

Immediately, after arrival of the Lower Court's Records, office shall examine the same and if found complete, shall issue notice of arrival of Lower Court's Records on the Advocate-on-Record of the husband/appellant under Rule 12 of Chapter IX of the Appellate Side Rules.

The husband/appellant is directed to prepare and file eight copies of informal paper books – printed, typewritten or cyclostyled, as the case may be – out of court, within a period of six weeks from the date of service of notice for arrival of Lower Court's Records.

All other formalities regarding preparation of paper books including filing of the appellant's declaration are dispensed with.

Liberty is granted to the parties to pray for listing of the appeal after the paper books are filed.

(Harish Tandon, J.)

(Biswaroop Chowdhury, J.)

