

MohinuddIn Azad Purkait.

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Court : Kolkata

Decided On : Jul-08-2011

Judge : Kanchan Chakraborty, J.

Acts : Code of Criminal Procedure (CrPC) . - Sections 125

Appeal No. : C.R.R.1457 of 2010.

Appellant : MohinuddIn Azad Purkait.

Advocate for Def. : Mr. Sukdeb Chatterjee. Adv

Advocate for Pet/Ap. : Mr. Avijit Chakraborty. Adv

Judgement :

1. The challenge in this revisional application is to the order dated 8.4.2010 passed by the learned Judicial Magistrate, 1st Court, Uluberia, Howrah whereby the prayer of the petitioner/husband in Misc. Case No.251 of 2006 under Section 125 of the Code of Criminal Procedure for adducing evidence, oral and documentary, was rejected.

2. On perusal of the materials placed before me, it appears that a proceeding was initiated by Sabina Yasmin under Section 125 of the Code of Criminal Procedure praying for monthly maintenance.

3. The matter came to the stage for hearing argument. At that stage, the petitioner/husband take out an application with a prayer to recall the O.P.No.1 and wanted to admit some documents, such as, decree passed in Title Suit No.14 of 2008, Talaknama, agreement of marriage etc. into evidence. That prayer was objected to by the opposite party/wife and the learned Trial Court upon consideration of the contention of both the parties passed the impugned order whereby the prayer was rejected.

4. The petitioner/husband has come up with this application challenging the legality, validity and propriety of the order mainly on the ground that he has been deprived of natural justice by not getting an opportunity to make out his case in the learned Trial Court properly.

5. Heard Mr. Chakraborty, learned Counsel for the petitioner.

6. The learned Counsel for the petitioner submits that the Court ought to have allowed his prayer and given him an opportunity to recall the O.P. No.1 and produce the documents because of changed circumstances which were essential for the proper adjudication of the dispute between the parties.

7. Mr. Chatterjee, learned Counsel representing the opposite party/wife contends that the order is not suffering from any illegality, incorrectness and impropriety and it is not required to be upset.

8. I have perused the order minutely. I have also seen that the written objection filed by the husband/petitioner in Misc. Case No.251 of 2006. It is the case of the petitioner herein that there was a development because of Talak and decree passed in the Title Suit in the year 2009. Therefore, written objection filed by him earlier in the learned Trial Court has not reflected those facts and in no way he was in a position to bring the fact on record as the facts he subsequently wanted to introduce by way of evidence straightway, took place in the year 2009.

9. It is the settled principle of law that in a judicial proceeding, one party cannot be taken by surprise by the other party by introducing new facts without bringing that on record and knowledge of the other party. In the instant case, the

petitioner/husband did not bring the fact or plead the fact he wanted to introduce at the time of hearing of the argument of the matter. Therefore, the opposite party/wife was put in most inconvenient situation because she was not given any opportunity to controvert the new facts wanted to be introduced by the petitioner/husband straightway through evidence. However, the learned Trial Court has not considered this matter from that angle and rejected his prayer on some other grounds.

10. Considering the nature of the proceeding, right of the parties to such a proceeding and the duty of the Court to adjudicate the dispute properly and finally, I think that the subsequent development allegedly have taken place should be brought on record first of all by the petitioner/husband by way of filing supplementary written objection because the written objection filed by him earlier does not contain any such facts. Thereafter, he will be at liberty to adduce evidence to prove the fact.

11. Accordingly, I dispose of this revisional application with the following directions;

a) that the petitioner/husband is at liberty to file supplementary written objection in the learned Trial Court within a month hence after giving copy to the opposite party/wife;

b) that upon receiving such an application, the learned Magistrate should accept the same and give the opposite party/wife an opportunity to controvert the same by filing affidavit-in-opposition;

c) that thereafter the learned Magistrate allow both the parties to adduce evidence, oral and documentary, only on the facts introduced by the petitioner/husband having direct nexus with their matrimonial life and related matters;

c) that after recording evidence, the learned Magistrate should dispose of the matter within a period of six months. There will be however, no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the learned

Advocates of the parties upon compliance of necessary formalities.

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