
(2009) 07 CAL CK 0123
In the Calcutta High Court
Case No : C.O. No. 1746 of 2009

Promita Chakraborty

APPELLANT

Vs

Avik Kumar Maitra and Another

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Special Marriage Act, 1954 — Section 28, 28(1), 28(2)

Citation : AIR 2009 Cal 286 : (2010) 8 RCR(Civil) 2373

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Sucharita Roy, for the Appellant;Shakya Sen, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—Both the parties wanted to dissolve their marriage by mutual consent. Accordingly, both the parties Jointly filed an application for divorce by mutual consent u/s 28 of the Special Marriage Act, 1954.

2. Subsequently, the petitioner (wife) left the station by executing a power of attorney in favour of one of her friends authorising him to represent her in the said matrimonial proceeding.

3. The said power of attorney holder filed an application before the learned Trial Judge seeking permission from the Court for allowing him to represent the petitioner (wife) in the said proceeding.

4. Such permission was refused by the learned Trial Judge by considering the spirit of the provision contained in Section 28(2) of the said Act which provides that on the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in Sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the District Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass

a decree declaring the marriage to be dissolved with effect from the date of the decree.

5. The propriety of the said order is under challenge at the instance the petitioner (wife) in this revisional application before this Court.

6. After hearing the learned Advocates of the parties and after considering the materials on record including the order impugned, this Court does not find any justification to interfere with the order impugned as this Court is of the view that if the constituted attorney is permitted to depose on behalf of the petitioner wife in a matrimonial proceeding where the parties want to dissolve their marriage by decree of consent, then the ultimate spirit of the provision regarding passing of such decree after hearing the parties and making such enquiry as to the solemnisation of their marriage and/ or the correctness of the averments made in the petition, will be frustrated.

7. The purpose of such hearing and/or enquiry as contemplated therein, was introduced not only for ascertaining the correctness of the averments made in the joint petition but also for ascertaining as to whether reconciliation between the parties is possible or not. Such ascertainment, in my view, cannot be made without hearing the parties personally.

8. In my view, the expression "hearing the parties" used in the said provision means the hearing of the parties personally. It is no doubt true that the constituted attorney can represent the principal and the constituted attorney can prove those acts which he has performed on the basis of the power of attorney, but the acts which were performed by the principal and/or the facts which are within the special knowledge of the principal, cannot be proved by the constituted attorney as he has no personal knowledge on the said facts.

9. Accordingly, this Court does not find any justification to interfere with the order impugned.

10. The revisional application, thus, stands rejected.