

Misc. (Civil) Case No. 03/2019

27-06-2019 Both the sides are represented.

The instant Misc. case has arisen out of a petition no. 158/19 in connection with T.S. (D) Case No. 02 of 2016 filed by the petitioner Latika Kalita who is the respondent in T.S. (D) Case No. 02 of 2016 on the grounds set forth in the said petition on being aggrieved by the order dated 22-11-2018 passed by this court in T.S. (D) Case No. 02/16 vide which it was directed that the case will proceed ex-parte against the O.P. i.e. the petitioner of this Misc. Case.

The brief facts of the case is that the above mention T.S. (D) case no. 02 of 2016 was filed by Sri Dhiraj Kalita against the respondent (petitioner of this case) Latika Kalita for dissolution of marriage by way of a decree of divorce which proceeded in this court and after the evidence of the plaintiff was recorded the case was fixed for evidence of the respondent side but thereafter, vide order dated 22-11-2018 it was directed that the case will proceed ex-parte against the O.P. i.e. the petitioner of this Misc. Case.

After this Misc. case was registered in this Court, due notice was given upon the plaintiff and the arguments of the Ld. Counsel for the petitioner and the Ld. Counsel for the O.P. were heard in order to determine the matter in hand.

I have carefully gone through the case record as well as the order dated 22-11-2018 and it is found that the first date for evidence of the respondent side was fixed on 28-08-2017 and on this date the respondent prayed for an adjournment and again on 20-10-17 the respondent side prayed for an adjournment and thereafter, on 20-11-17, 21-12-17, 02-02-18, 21-03-18, 02-05-18, 19-06-18, 21-07-18, 29-08-18 and 04-10-18 the respondent side again filed petitions for adjournment which were allowed and subsequently on 22-11-2018 the respondent side was absent without any steps for which it was directed that the case will proceed ex-parte and thereafter, the case proceeded and the arguments were heard and the case was fixed for judgment and in the meantime the respondent Latika Kalita filed a petition under Order 9 Rule 7 of the C.P.C. with a prayer to vacate the ex-parte order and hear the respondent/ petitioner.

In the course of hearing the Ld. Counsel for the petitioner (respondent) submitted, by quoting from the decision reported in [2018 STPL 5758] [AIR 2018 GAUHATI 57], that adjournment is to be granted by the court on the basis of the facts and circumstances of each and every case as well as sufficiency of the reasons cited and not depending on the number of times of adjournment already granted and he also quoted from a decision reported in **AIR 2007 SUPREME COURT 1889** and submitted that a party could not be made to suffer when he was not at fault and as such the petitioner respondent may be heard in the connected case.

On the other hand, the Ld. counsel for the O.P. namely Dhiraj Kalita, who was the petitioner in the T.S.(D) Case no. 02 of 2016, submitted that the petition filed by the respondent is not maintainable and barred by limitation and he further submitted that when the hearing of the suit is complete and the court had adjourned the case for pronouncing the judgment, an application under order 9 rule 7 of the CPC would not be maintainable by

referring to the case of B.K. Jain –vs- Archana Kumar reported in **AIR 2005 SC 626.**

On a careful scrutiny of the materials available before me it is found that though repeated opportunities were given to the respondent side to adduce evidence but the respondent side failed to avail the said opportunity over a prolonged period of time and even though the respondent side took the plea in this Misc. Case that she became defaulter due to non communication of the fixed dates by her earlier engaged advocate but nothing is mentioned in the petition filed by her as to when she came to know about the said default. It may be mentioned in this context that though the principles of natural justice desire that a decision should not ordinarily be reached behind the back of a party as far as practicable but nevertheless, a party cannot be allowed to sit idle for an unusually long period of time at the cost of the other party and considering all the facts and circumstances of this case I am of the opinion that the petition no. 158/19 filed by the respondent petitioner Latika Kalita is devoid of sufficient merit and accordingly, the said petition stands rejected.

This Misc. Case is therefore dismissed on contest but without any costs.

District Judge,
Goalpara.