

23.12.2020

Mithun

List – D/L

Sl. No. 06

Ct. No. 09

CO/1156/2019
with
CAN/1/2020 (Old No:839/2020)

Kaberi Bhattacharya Ray

-Vs.-

Sri Pratik Ray

Mr. Soumak Bera, Adv

... for the Petitioner

In spite of service of notice upon the learned Advocate for the opposite party as directed by this Court vide order dated 18th December, 2020, the opposite party remains unrepresented.

Therefore, I have no other alternative but to take up hearing of the instant application ex parte.

This is an application under Section 24 of the Code of Civil Procedure filed by the wife/petitioner praying for transfer of Matrimonial Suit No.96/2019 pending before the Court of the learned Additional District Judge at Kalyani to the Court of the learned District Judge, Paschim Midnapore at Midnapore.

It is alleged by the petitioner that her marriage with the opposite party was solemnized according to the Hindu Rites and Ceremonies on 22nd April, 2016. Few days after marriage, the opposite party was transferred and posted to United States of America. The petitioner also went to the United States of America. Subsequently, both of them lead their conjugal life in U.S.A. The petitioner gave birth to a female child on 28th August, 2017. On 16th November, 2018 the parties to the suit along with their minor child came to India to

attend a marriage ceremony of the cousin of the petitioner. The opposite party immediately went to his paternal home at Chakdah to see his parents on the plea that he would returned to U.S.A. within very short period of time. After returning to U.S.A., the opposite party refused to make any contact with the petitioner. The petitioner tried to establish contact with her husband repeatedly but failed. Suddenly, she received a summons of Matrimonial Suit No.96 of 2019 filed by the opposite party against her before the learned Additional District Judge at Kalyani.

Apart from the usual pleadings of distance of the Trial Court from her paternal home inconvenience of the petitioner to reach the Court of trial from Chakdah etc, it is specifically pleaded that the Court of the learned Additional District Judge at Kalyani has no territorial jurisdiction to try the suit and accordingly, the suit should be transferred to the Court of the learned District Judge, Paschim Midnapore at Midnapore.

Section 19 of the Hindu Marriage Act speaks about the jurisdiction of the Court to which a petition under the said Act shall be presented. Relevant portion of Section 19 runs thus:

Section19 (1): "Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction-

- (i) the marriage was solemnized, or
- (ii) the respondent, at the time of the presentation of the petition resides, or
- (iii) the parties to the marriage last resided together....."

In the instant case marriage was solemnized at Paschim Midnapore. In the said matrimonial suit the petitioner is the respondent. She resides at Paschim Midnapore at her paternal home and the parties to the marriage lastly resided together in U.S.A. Therefore, the Court of the learned District Judge, Paschim Midnapore has the jurisdiction to try this case in India excepting the jurisdictional Court at U.S.A. where the parties lastly resided together.

In view of such circumstances, I am of the view that the Court of the learned Additional District Judge at Kalyani has no territorial jurisdiction to try the instant Matrimonial suit and the petitioner is entitled to have her application allowed.

Accordingly, the application under Section 24 of the Code of Civil Procedure is allowed.

Matrimonial Suit being No.96 of 2019, pending before the learned Court of Additional District Judge at Kalyani, Nadia be transferred to the Court of the learned District Judge at Midnapore in the District of Paschim Midnapore for trial and disposal.

Department is directed to send plain copies of the order to both the Courts below for information and necessary action.

The parties are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)