

23.12.2020

Mithun

List – D/L

Sl. No. 07

Ct. No. 09

CO/1960/2019

with

IA No: CAN/1/2020 (Old No:CAN/840/2020)

**Kaberi Roy (Bhattacharya) @ Kaberi
Bhattacharya**

-Vs.-

Pratik Roy

Ms. Soumak Bera, Adv

... for the Petitioner

This is an application filed by the mother of a minor child praying for transfer of Act VIII Misc. Case No.23 of 2019 from the Court of the learned District Judge, Krishnagar, Nadia to the Court of the learned District Judge at Midnapore, Paschim Medinipur.

The case of the petitioner is that her husband filed an application under Section 25 of the Guardians and Wards Act before the learned District Judge at Krishnagar, Nadia which was registered as Misc. Case No.23 of 2019 praying for custody of their minor daughter, named Aditra Roy.

It is also ascertained from the application under Section 24 of the Code of Civil Procedure that the marriage of the petitioner and the opposite party was solemnized according to Hindu Rites and Ceremonies on 22nd April, 2016. After marriage the opposite party was transferred and posted to United States of America. Both the petitioner and the opposite party lead conjugal life in U.S.A. and in the said wedlock, the petitioner gave birth to a female child on 28th August, 2017. Subsequently, on 16th November, 2018 the petitioner and the opposite party along with their minor child

returned to India. Petitioner with the minor child went to her paternal home at Midnapore while the opposite party went to his paternal home to see his parents at Chakdah in the district of Nadia. Subsequently the opposite party returned to U.S.A. leaving behind the petitioner and their minor daughter at Midnapore. By filing Misc. Case No.23 of 2019 under the Guardians and Wards Act, the opposite party prayed for custody of their minor child.

It is pertinent to mention here that even after service of notice of the instant proceeding, the opposite party preferred to remain absent and accordingly, application is taken up for hearing ex parte.

From the averment made in the application under Section 24, it is ascertained that the minor child of the parties is now residing with the petitioner at her paternal home in Midnapore. It is no longer res integra that a case for custody of a minor child is required to be heard by a Court of competent jurisdiction where the child ordinarily resides. In support of the above observations, decision of this Court in the case of ***Ruhi Sahina Vs. Syed Masidur Rahaman*** reported in ***2019(1) CLJ (Cal) 86*** may be relied on.

Since the minor child ordinarily resides with her mother at Paschim Midnapore, Act VIII Misc. Case 23 of 2019 ought to be heard by the Principal Judge of original Civil Jurisdiction of the District.

For the reasons stated above, I am inclined to allow the instant application.

Act VIII Misc. Case No.23 of 2019 pending before the learned District Judge, Krishnagar, Nadia be transferred to the learned District Judge, Midnapore, Paschim Medinipur 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.)