

04. 12 . 2020

BP
Sl.19
Court no.5

C.O. 1298 of 2020

(Via Video Conference)

Dinesh Kumar Jain
Vs.
Rajeev Kumar Jain & Ors.

Mr. Debjit Mukherjee
Mr. Deepak Jain
..for the Petitioner.

Mr. Rajeev Kumar Jain
.. the Opposite Party No.1 (in person).

This revisional petition is against an order dated 18th September, 2020 passed by the Learned District Judge, Barasat in Matrimonial Suit No. 616 of 2020. By the order impugned, certain respondents were directed to remain physically present before the court on 12th October, 2020. The petitioner is the respondent no.6 in the matrimonial suit filed by the opposite party no.1.

Learned counsel for the petitioner / respondent no.6 in the matrimonial suit filed in the court below, submits that the impugned order was passed in an application under Order VII Rule 14 read with Section 151 in the said suit for supply of documents which the

plaintiff was relying on in the suit. It is submitted that the impugned order does not indicate any reason for directing that the respondents to be physically present before the court on the returnable date. Counsel relies on Order IX Rule 12 of The Code of Civil Procedure which stipulates the consequences for non-attendance by a party who had been ordered to appear in person by a court. Counsel also relies on an order reported in 2018 SCC On Line Cal 14653 (Arrjaw Builder Pvt. Ltd. v. Babulal Verma and Others) passed by a Learned Judge of this Court. Order dated 13th September, 2018 of the learned Judge of this Court where after noting the provisions of Order IX Rule 12 of the Code of Civil Procedure, held that the said provisions had been misconstrued by the court below in that matter.

Learned counsel for the opposite party no.1, appearing in person, submits that the impugned order has become infructuous since by a subsequent order dated 2nd December, 2020 the Matrimonial Suit has been transferred to the 3rd Court of the Additional District Judge, Barasat and the defendants have not been directed to appear in person on the returnable date. The returnable date has been fixed on 5th January, 2021.

Upon considering the above submissions, this

court of the view that Order IX Rule 12 cannot have any application to the facts this case since the said provisions would come into play only after a party to the suit fails to appear or attend court despite an order directing such appearance. Further, since the matrimonial suit has been transferred to the court of the Additional District Judge, Barasat and no order has been made directing the defendants to remain physically present by the subsequent order of 2nd December, 2020, this court is not inclined to interfere with the impugned order where the matter was originally pending. The grievance of the petitioner has hence become infructuous. This court however takes note of the submission made on behalf of the petitioner that the order dated 2nd December, 2020 has not been signed till date. The opposite party no.1, appearing in person, is directed to take appropriate steps in this regard.

C.O. 1298 of 2020 is disposed of in terms of the above.

(Moushumi Bhattacharya, J.)

