

(4, 5 & 6)
06.09.2021
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

(Via Video Conference)

CO No. 1145 of 2021
With
CO No. 1429 of 2020
With
CO No. 1499 of 2021

Shilpi Adhikari nee Das Bairagya
-versus-
Rahul Adhikari

Mr. Atis Kumar Biswas,
Mr. Amit Singh ... for the petitioner.

Mr. Dhananjoy Banerjee,
Ms. Joyee Maiti, ... for the opposite party.

Re : CO 1429 of 2020.

This is an application under Section 24 of the Code of Civil Procedure filed by the wife, the respondent of the Matrimonial Suit No. 100 of 2020.

The said suit was pending before the Court of the learned Additional District Judge, Kalna, District : Purba Bardhaman but during the pendency of the present application same has already been decreed ex parte on February 06, 2021, rendering the present application infructuous.

CO 1429 of 2020 is therefore **dismissed as infructuous.**

No order as to costs.

Re : CO 1145 of 2021.

This is an application under Section 24 of the Code of Civil Procedure for withdrawal of the Act VIII Misc. Case

No. 2 of 2021 from the Court of the learned Additional District Judge at Kalna, District : Purba Bardhaman and transfer of it to the Court of the learned District Judge, Nadia at Krishnagar.

Mr. Dhananjoy Banerjee, learned counsel appearing on behalf of the opposite party, the petitioner of the aforesaid misc. case submits that since the child is now living with the mother his client wishes to file a proceeding under the Guardians and Wards Act, 1890, for similar relief before the appropriate Court having jurisdiction and in that view of the matter he does not want to proceed with the present misc. case sought to be transferred by the present application.

In view of such stand of the opposite party, the said Act VIII Misc. Case No. 2 of 2021 pending before the Court of the learned Additional District Judge at Kalna, District : Purba Bardhaman is dismissed as not pressed.

CO 1145 of 2021 is thus **disposed of** with the above terms without any order as to costs.

It is, however, made clear that this order will not prevent the father of the child, opposite party herein to initiate appropriate proceeding before the competent Court having jurisdiction for the similar relief as prayed for in the aforementioned misc. case.

Re : CO 1499 of 2021.

This is an application under Section 24 of the Code of Civil Procedure.

The wife, the petitioner herein, has suffered an ex parte decree in the Matrimonial Suit No. 100 of 2020 and has initiated a proceeding under Order IX Rule 13 of the Code of

Civil Procedure before the learned Additional District Judge, Kalna, District : Purba Bardhaman for setting aside the said ex parte decree being Misc. Case No. 02 of 2021.

The petitioner by the present application is praying for withdrawal of the said misc. case from the said Court and for transfer of it to the Court of the learned District Judge, Nadia, Krishnagar on the ground that she being a village lady would not be able to travel to Kalna District. Purba Bardhaman from her residence at Krishnanagar District. Nadia to prosecute the said misc. case.

Considering the fact that the petitioner has already suffered an ex parte decree of divorce pending disposal of her application for transfer of the matrimonial suit in which such ex parte decree has been passed, her prayer for withdrawal and transfer of the proceeding for setting aside the said ex parte decree deserves to be allowed.

Let the Misc. Case No. 02 of 2021 and the application thereto be withdrawn from the Court of the learned Additional District Judge, Kalna, District : Purba Bardhaman and be transferred to the Court of the learned District Judge, Nadia, Krishnagar, who may keep the said suit in his own file or may transfer it to any other Court competent to try and dispose of the said misc. case under his Judgeship.

The transferee Court shall proceed with the said misc. case from the stage at which it has already reached.

Since no affidavit-in-opposition has been invited from the opposite party, the allegations made in this application are deemed to have been denied by him.

CO 1499 of 2021 is thus allowed.

No order as to costs.

The department is directed to communicate this order immediately to the Court of learned Additional District Judge at Kalna District. Purba Bardhaman.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)