

(02)
07.03.2022
(p.jana)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO No. 2273 of 2019
(IA No: CAN 2/2021) (not in file)
Sri Gopal Basu
-versus-
Nivedita Basu

Mr. Rudraman Bhattacharyya,
Mr. Sourojit Dasgupta,
Ms. Aafreen Parveen, ... for the petitioner.

Mr. Rudraman Bhattacharyya, learned counsel appearing for the petitioner, files affidavit-of-service which is taken on record.

Despite repeated attempts, the presence of the opposite party could not be secured.

The opposite party has filed an application under Section 18 of The Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as 'the said Act' in short) before the learned District Judge, District: 24 Parganas (North) at Barasat for the following reliefs:-

"a) To pass a judgment and decree declaring that the plaintiff is entitled to a maintenance monthly allowance of Rs. 20,000/- (Rupees Twenty Thousand) only for herself and the defendant's daughter.

b) To pass an order directing the defendant to make payment of Rs. 24,00,000/- (Rupees Twenty Four Lakh) only for expenses incurred for the maintenance including medical and educational expenses.

c) To pass an order directing the defendant to pay Rs. 10,00,000/- for the marriage expenses of the daughter.

d) To pass such other and further order/orders as Your Honour may deem fit and proper in the instant case."

The said application was subsequently transferred to the 3rd Court of learned Additional District Judge, Barrackpore, District: 24 Parganas

(North) and the same is now pending before the said Court.

The petitioner in the said proceeding filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the said application for maintenance, inter alia, on the ground that the opposite party has no cause of action to initiate the said proceeding and the learned Trial Judge is not the proper Court to entertain the said proceeding.

The learned Trial Judge by the order impugned has dismissed the said application holding, inter alia, that the said proceeding has been wrongly registered as title suit instead as misc. case and erroneously declaration for the entitlement of the opposite party has been prayed for but the said defects being hyper technical would not entail rejection of the application for maintenance.

The application for maintenance under the said Act has all trappings of a Civil suit.

There is no specific provision under the said Act as to which Court the proceeding for maintenance under the said Act is required to be initiated, in the absence of any specific provision in the said Act the said question can only be determined with reference to Section 20 of the Code of Civil Procedure. The said proceedings in terms of the said provision of the Code can be initiated in a Court within the local limits of whose jurisdiction the husband resides or carries on business or personally works for gain or in a Court within the local limits of whose jurisdiction, the cause of action wholly or in part arises. (See: **ANIL KUMAR**

***BEDI V. SMT. ANJANA BEDI* reported in AIR 1984
CALCUTTA 49)**

The pecuniary jurisdiction of the Court of first instance for initiation of such proceeding shall be determined according to the value of the subject matter of the suit to be calculated in terms of Section 7(ii) of the West Bengal Court Fees Act, 1970.

For the reasons discussed above, the Court of learned District Judge cannot be the Court of first instance for an application for maintenance under the said Act.

Filing of the application for maintenance in a wrong Court cannot be the ground for dismissal of it, such defect can at best be a ground under Order VII Rule 10 of the Code for return of the said application to the opposite party and for filing of it in the appropriate Court.

C.O. 2273 of 2019 is disposed of by granting liberty to the parties to approach the 3rd Court of learned Additional District Judge at Barrackpore District. 24 Parganas (North) for return of the said application for maintenance and for filing of the same before the appropriate Court having jurisdiction.

There shall be no order as to costs.

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.)