

14.06.2022
Item no.9
Aloke

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

CO 46 of 2022

**Abhishek Dey
Vs.
Sarwari Siddique**

Mr. Bappa Dutta, Advocate
Mr. Bhaskar Roy Mahashya, Advocate
...For the petitioner

Ms. Rima Sarkar, Advocate
... For the opposite party

The application is at the behest of the husband seeking transfer of an application under Section 7/10 read with Section 24 of the Guardians and Wards Act, 1890 pending before the learned District Judge, Darjeeling on the ground of lack of jurisdiction of the learned District Judge, Darjeeling to entertain such an application.

Learned Advocate appearing for the petitioner relies upon Section 9 of the Act of 1890 and submits that the child in question is ordinarily residing within the jurisdiction of the learned District Judge, Jalpaiguri. No property belonging to the child in question is lying and situate within the jurisdiction of the District Judge, Darjeeling. Therefore, there is no jurisdiction on the part of the learned District Judge, Darjeeling to decide the application filed at the behest of the opposite party.

Section 9 of the Act of 1890 contemplates a situation where, in the event a District Judge before which an application under the Act of 1890 is presented is of the view that he does not have requisite jurisdiction, he will return the application to be disposed of justly or conveniently by any other District Court having jurisdiction. The learned District Judge before which the application is pending is yet to arrive at any finding with regard to the lack of jurisdiction.

The question of convenience lies in favour of the opposite party who is the wife. It is claimed on behalf of the opposite party that she was driven out of the matrimonial house without the child.

In such circumstances, I am not minded to exercise powers under Section 24 of the Code of Civil Procedure, 1908 as invited to on behalf of the petitioner.

CO 46 of 2022 is disposed of accordingly.

(Debangsu Basak, J.)