

Item No. 7
21.09.2023
Court. No. 19
GB

C.O. 1430 of 2023

Smt. Indrani Das
Vs.
Sri Soumyajit Das

*Mr. Siddhartha Bhattacharyya,
Ms. S. Sarkar,
Mr. Subas Ray*

...for the Petitioner.

This Court does not find any illegality in the order dated April 25, 2023 passed by the learned Additional District Judge, 13th Court at Alipore in Matrimonial Suit No.899 of 2022.

By the said order, the petitioner's application for rejection of the matrimonial suit on the ground of lack of jurisdiction was dismissed as being premature. The learned court was of the view that until the order by which the suit had been fixed for ex parte hearing was recalled, the petitioner could not maintain any application in the proceeding. The suit was running ex parte against the petitioner.

It also appears that an application wrongly captioned as an application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure, praying for taking off the suit from the ex parte board along with other reliefs, is still pending. The petitioner had also approached this Court for transfer of the suit from the court of the learned Additional District Judge, 13th Court at Alipore to the learned Family Court, Bankshall Court Complex, Kolkata on the ground of

jurisdiction. Such prayer had been turned down by this Court on the ground that unless the order by which the suit was fixed for ex parte hearing was recalled, the prayer for transfer was not maintainable. On similar grounds of jurisdiction again, the application was filed by the petitioner for dismissal of the suit on the ground of lack of territorial jurisdiction.

In C.O. 3412 of 2022 a coordinate Bench held as follows:-

“In view of the aforesaid facts and circumstances it appears that presently the suit is running before the court below as ex-parte matter. Though the application under Order IX rule 13 of the Code does not lie at this stage, as the suit has not yet been decreed ex parte but since the petitioner has also quoted section 151 of the C.P.C., in the petition, the court below ought to have disposed of the petitioner’s application for vacating hearing of the suit ex-parte, before proceeding further with the suit.

Since the suit at this stage is posted for ex parte judgment and the defendant’s prayer for vacating ex parte order has not yet been disposed of by the court below, I find that the application under Section 24 of the Code is premature and not maintainable at this stage.

In view of above, C.O. 3412 of 2022 is disposed of with a direction upon the learned court below to dispose of the defendant’s prayer for vacating the order of ex-parte hearing within a period of eight weeks from the date of communication of the order.”

Under such circumstances, this Court does not find any justification as to how the plaintiff once again questioned the jurisdiction when there was a specific direction of a learned Coordinate Bench that the prayer for vacating the order of ex parte hearing of the suit should be disposed of within eight weeks from the date of communication of the order dated January 16, 2023, passed in C.O.3412 of 2022.

Under such circumstances, the revisional application is dismissed. The learned court below shall hear out the application as directed in the earlier civil revisional application, within a week from the next date fixed. On the outcome of the said application, the petitioner may approach the learned court below for necessary orders strictly in accordance with law by filing appropriate applications, if so advised.

This Court has not decided the question of jurisdiction and it shall be open to the learned court below to decide the same strictly in accordance with law, if the situation so arises.

Accordingly, the revisional application is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)