

06.09.2023
Court No. 19
Item no.170
CP

C.O. No. 1543 of 2023

Rukhsar Parveen

Vs.

Md. Sirajuddin

Mr. Debjit Mukherjee

Ms. Susmita Chatterjee

Ms. Dipanwita Ganguly

Mr. Kaustav Bhattacharya

Ms. S. Chakraborty

.....for the petitioner.

This is the third occasion that an affidavit-of-service has been filed indicating that the opposite party has been served with the copy of the revisional application as also notices indicating that this matter would appear before this court today.

The petitioner (mother) seeks transfer of Act VIII Case No. 50 of 2023, which is pending before the learned Additional District Judge, 8th Court at Barasat to any court of competent jurisdiction at Howrah.

Mr. Mukherjee, learned advocate, refers to the provisions of Section 9(1) of the Guardians and Wards Act, 1890 in order to substantiate the ground for transfer. It is submitted that the law provides that the district court within whose jurisdiction the minor child ordinarily resides shall have the jurisdiction to hear out the matter. Referring to Section 4(5)(b)(ii) of

the said Act, learned Advocate submits that the residence of the minor child would be the prime consideration for determination of the jurisdiction of the court, where the Act VIII Case should be filed.

Reliance has been placed on several decisions. The decision in Sri Soumendra Malik vs. Smt. Tumpa Malik, reported in (2018) 1 CAL 314 (HC), is discussed hereunder:-

“12. It has to be appreciated that the role of the court does not end with the appointment of a guardian over a minor. Nor does the responsibility of the court cease with the appointment of a guardian. The very nature of the provisions of the Guardians and Wards Act, 1890 tend to show that the court has to supervise the work of the guardian, not to remove its watchful eyes from the minor, ensure that the ward's welfare is being looked after by the guardian, his or her property is being taken care of by him and so on. Therefore, this court cannot be far removed from the minor. The ward has to be accessible to the court as much as the court should be accessible to the guardian and any other interested person in his or her welfare. Hence, the provision that only the court within the jurisdiction of which the minor ordinarily resides has the jurisdiction to entertain proceedings under the said Act.”

Reliance has also been placed on a decision in the matter of Soumi Mukherjee vs. Sri Manas Mukherjee, reported in (2019) 4 CHN 480. Paragraph 22 of the said decision is quoted below:

22. There is no dispute that the question as to whether a minor ordinarily resides in a particular place or not, is undoubtedly a question of fact. In a legal proceeding, when a fact is asserted by one party and the same is denied by the other, it gives rise to an issue of

fact which requires to be adjudicated on the basis of evidence. It is a settled principle of law that a fact not disputed need not be proved. In the application under Section 24 of the CPC, it is categorically stated by the petitioner that her minor son has been residing at Makhla in the District of Hooghly since March, 2018. The said fact has not been disputed by the opposite party. The opposite party has raised dispute as to the present residence of the petitioner – whether it is at Santragachi or Makhla. The opposite party also pleaded that the petitioner stays at Asansol for her employment. But the facts that their minor child has been residing in Makhla and pursuing his studies at Methodist School, Dankuni, are not challenged. The contentions of the petitioner as to the “ordinary residence” of the minor remains uncontroverted. Order 8 Rule 5(1) of the CPC provides that every allegation in the plaint, if not denied specifically or by necessary implication, shall be taken to be admitted except as against the party under disability. Under Rule 5(2) of Order 8, it is open to the court to pronounce a judgment on facts admitted. The rule is, of course, permissive in nature. In support of my decisions, following decisions may be relied on:- * * * * *

In the applications filed by the opposite party before the learned court, there are admissions that the child is residing with the mother. The mother resides at Shibpur, Howrah.

As the opposite party has been served thrice, but he has not shown any inclination to contest this proceeding, the court is of the view that no useful purpose will be served keeping the revisional application pending. It also appears that my Predecessors in Office, being satisfied with the grounds as pleaded by the mother, had stayed the proceedings, before the learned court below.

Having discussed the laws applicable, there is no doubt that any competent court within the district of Howrah would have jurisdiction to hear the matter. The learned District Judge, 24-Parganas North at Barasat, is directed to transfer the Act VIII Case No. 50 of 2023 along with the pending applications, if any, to the court of the learned District Judge at Howrah.

The leaned District Judge, Howrah shall issue notices upon the parties, upon receipt of the records and proceed with the hearing of the Act VIII Case along with pending applications, if any, and dispose of the same expeditiously.

The revisional applications are accordingly disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)