

13.06.2023
Court No. 19
Item no.11
CP/GB

C.O. 1642 of 2023

Manindranath Golder
Vs.
Kusumlata Sarkar (Goldar)

Mr. Sounak Bhattacharya
Mr. Sounak Mandal
Mr. Anirban Saha Roy

.....for the petitioner.

The husband/petitioner in Matrimonial Suit No. 99 of 2022 is aggrieved by the order dated March 23, 2023, passed by the learned Additional District Judge, 2nd Court, Islampur, Uttar Dinajpur.

The opposite party/wife filed an application under Section 13 of the Hindu Marriage Act, 1955. The said suit was registered as Matrimonial Suit No. 99 of 2022. The husband prayed for rejection of the plaint on the ground of the same being barred by law for non-compliance of Section 19 of the Hindu Marriage Act, 1955.

Mr. Bhattacharya, learned advocate for the petitioner, submits that the learned court below ought to have treated the application as an application under Order VII Rule 10 of the Code of Civil Procedure and returned the plaint for

presentation before the court having jurisdiction. According to him, the suit could not have been filed at Islampur Court as the learned court did not have any jurisdiction to entertain the suit. However, an application under Order VII rule 11(d) was filed for rejection of the plaint.

According to Mr. Bhattacharya, the parties last resided at Bagda and not at College Para. It is also submitted that the petitioner was not a resident of College Para when the plaint was presented before the learned court below. Under such circumstances, an application was filed for rejection of the plaint on the ground of the same being barred by the law for non-compliance of the provisions of Section 19 of the Hindu Marriage Act, 1955.

Section 19 is quoted below for convenience.

“19. Court to which petition shall be presented.—Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:—

(i) the marriage was solemnized, or
(ii) the respondent, at the time of the presentation of the petition, resides, or
(iii) the parties to the marriage last resided together, or

[(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or]

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons

who would naturally have heard of him if he were alive.”

Having gone through the plaint as a whole, this court finds that in paragraph 4 of the plaint the wife had categorically stated that the petitioner and the respondent were living as husband and wife at the matrimonial home situated at College Para, Post Office and Police Station – Islampur, District – Uttar Dinajpur. In paragraph 15 it has been stated that the parties last resided together at collage para, within the jurisdiction of the learned court. The suit was filed in the Court of the learned Additional District Judge at Islampur, District – Uttar Dinajpur, that is, within the jurisdiction of the court where the parties last resided. Thus, the condition of Section 19(ii) of the Hindu Marriage Act, 1955 is fulfilled, insofar as, the jurisdiction of the learned Islampur court is concerned.

Further pleadings as to where the petitioner stays at present and the place from which the respondent went missing, are irrelevant for the purpose of jurisdiction, as the averments in paragraph 4 clearly indicate that the parties last resided together at Collage Para. At the stage of consideration of the application under Order VII Rule 11 of the Code of Civil Procedure, this Court read the plaint as a whole and concludes that the learned

court below did not err in passing the order impugned. Such pleading is sufficient for dismissal of the application filed by the defendant under Order VII Rule 11(d) of the Code of Civil Procedure.

Accordingly, the revisional application is dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)