

16.1.2023
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Ct. no. 652
sb

C.O. 3412 of 2022

Smt. Indrani Das
Vs.
Sri Soumyajit Das

Mr. Sidhartha Bhattacharya
Ms. Shamolima Sarkar ...for the petitioner

Mr. Avik Banerjee
Mr. Prosenjit Sen ...for the opposite party

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of the Matrimonial suit no. 899 of 2022 presently pending before the court of learned Additional District Judge, 13th Bench, Alipore to the learned Family Court, Bankshall Court complex, Kolkata.

The petitioner contended that according to Section 31 of the Special Marriage Act, 1954, every petition under Chapter V or chapter-VI shall be presented to the District court within the local limit of whose original civil jurisdiction either, the Marriage was solemnised or the opposite party, at the time of presentation of the petition, resided or the parties to the marriage last resides together. Here, marriage took place within the jurisdiction of the Family court, Bankshall court complex, Kolkata. The opposite party now resides within the jurisdiction of Family court, Bankshall court complex, Kolkata and the parties also last reside within

the jurisdiction of Family court, Bankshall court complex, Kolkata and as such Alipore court has got no jurisdiction to try the suit and the suit may be transferred from the Alipore court to the Bankshall court, Kolkata for trial who has got the territorial jurisdiction to try.

Learned counsel for the opposite party vehemently raised objection and contended that in paragraph 51 of the plaint, they have specifically described that cause of action of the suit arose within the jurisdiction of Alipore Court and furthermore defendant/petitioner herein has refused to receive summon and as such the suit is running in the board of the ex-parte hearing and as per order dated 5.9.2022, the plaintiff/opposite party has adduced evidence on their part and the documents are also marked as exhibit and the case is adjourned for hearing ex parte judgment. Accordingly the petitioner has no locus standi to pray for transfer as the petitioner has waived his right to contest the suit and he is no longer a party to the suit whose cause can be heard by the court.

Certified copy of the order reveals that court below, relying upon Bailiff's report, that petitioner has refused to accept summon was pleased to fix the suit for ex-parte hearing vide order dated 06.05.2022 and vide order dated 05.09.2022, court below has recorded evidence of plaintiff/opposite party's witness as P.W.1 and

documents filed by plaintiff are marked as exhibit 1&2 and the case was fixed for ex-parte argument on 26.09.2022. On 26.09.2022 plaintiff filed written notes of argument and 18.11.2022 was fixed for delivery of ex-parte judgment. Now it appears that in the meantime the petitioner has filed an application under Order IX Rule 13 read with Section 151 of the Code of Criminal procedure along with fresh vakalatnama, by filing put up petition, on 28.10.2022, though they have not filed written statement. It is submitted on behalf of the petitioner that the said application has not yet been disposed of.

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.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)