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29.8.2023
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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

C.O. 13 of 2023

In the Matter of : Sanjukta Gope

Mr. Arijit Ghosh
Ms. Swarnali Ghosh ...for the petitioner

Despite service, none appears on behalf of the opposite party.

This is an application under Section 24 of the Code of Civil Procedure filed by the petitioner.

Ms. Sanjukta Gope, seeking transfer of Matrimonial Suit No. 410 of 2022 pending before the learned Court of Additional District Judge, 1st Court, Siligri Darjeeling to the Court of learned Additional District Judge, Alipurduar.

It is submitted by Mr. Ghosh, learned counsel appearing on behalf of the petitioner that Ms. Sanjukta Gope, the petitioner before this Court filed a suit for divorce under the Special Marriage Act before the learned District Judge, being Matrimonial Suit No. 107 of 2021 which was subsequently disposed of *ex parte* by learned Additional District Judge, Fast Track 1st Court, Alipurduar Jalpaiguri on 07.7.2022. On 09.11.2022 the opposite party / husband Sri Roni Ghosh, filed an application under Order IX Rule 7 read with Section 151 of the Code of Civil Procedure which was registered as Misc. Case No. 23 of 2022 seeking an opportunity to contest the suit for divorce after recalling the

ex parte decree. It is further submitted by Mr. Ghosh that the opposite party / husband has filed another application under Section 22 of the Special Marriage Act for restitution of conjugal rights which is pending before the learned Additional District Judge, 1st Court at Siliguri.

In my humble opinion to maintain the suit for restitution of conjugal rights the opposite party / husband is under legal obligation to get the *ex parte* decree recalled or set aside and his petition since is pending before the learned Additional District Judge, Fast Track 1st Court, Alipurduar Jalpaiguri to avoid any conflict in the decision the Mat Suit No. 410 of 2022 should be adjudicated by the learned Court who is in seisin of the application filed by the husband to recall the *ex parte* decree for divorce. The Matrimonial Suit is withdrawn from the file of Court of learned Additional District Judge, 1st Court at Siliguri and is transferred to the Court of learned District Judge, Alipurduar who will assign the case to the learned Court who is in seisin of the case arising out of an application under Order IX of the Code of Civil Procedure passed by the opposite party / husband.

The revisional application, is thus, disposed of.

Let a copy of the order be sent to the learned Courts below for information and necessary action.

(Siddhartha Roy Chowdhury, J.)