

In the High Court at Calcutta

Circuit Bench at Jalpaiguri

Civil Revisional Jurisdiction

CO 22 of 2023

**Remi Majumder
Versus
Shyamal Kanti Bose**

Mr. Bapi Sarkar,Adv.

Mr. Tanmay Sinha Sarkar,Adv.

....For Petitioner.

Ms. S. Basu,Adv.

....for respondent.

Affidavit-in-opposition filed by the
respondent is kept with the record.

The Petitioner being the defendant in OC
Suit No. 05 of 2021 pending before the learned
Civil Judge (Senior Division) at Alipurduar has
filed the present application under Section 24 of
the Code of Civil Procedure, 1908 for transfer of
the suit from the Court of learned Civil Judge
(Senior Division), Alipurduar to the Court of
learned Civil Judge (Senior Division) at Siliguri on
the ground that the petitioner is suffering from
osteo arthritis and is not in a position to travel
from Siliguri to Alipurduar to keep track of the
matter and to give proper instruction to the
learned conducting lawyer and to give evidence in
the suit.

Learned Counsel for the petitioner/defendant submits that there is also a criminal case pending at Siliguri wherein the plaintiff is appearing and, as such, the plaintiff will not suffer, if the suit is transferred from Alipurduar to Siliguri.

Counsel for the petitioner submits that if the case is not transferred from the Court of Alipurduar to Siliguri, the petitioner/defendant will suffer an irreparable loss and hardship. Counsel for the petitioner further submits that the opposite party/plaintiff is also the resident of Siliguri and only the suit property is situated within the jurisdiction of Alipurduar and, as such, the suit was filed before the learned Civil Judge (Senior Division) at Alipurduar. He further submits that if the suit is transferred from the Alipurduar to Siliguri, none of the parties will be prejudiced.

Per contra, learned Counsel for the plaintiff/respondent submits that the suit property is situated within the jurisdiction of Alipurduar Court and, accordingly, the plaintiff has filed the suit before the competent Court having jurisdiction.

Learned Counsel for the respondent/plaintiff submits that in the suit it is not necessary for the parties to appear before the Court on each and

every date in person and if the petitioner /defendant is not in a position to appear before the learned Court at Alipurduar, he can appoint any attorney for taking appropriate steps in the said suit and for her examination, her evidence can be recorded by appointing Commissioner. Counsel for the respondent/plaintiff submits that as the plaintiff has filed the suit before the appropriate Court having jurisdiction and thus the same cannot be transferred to Siliguri only on the ground of illness of the petitioner/defendant.

Considered the submissions made by the respective parties and perused the materials on record including the plaint and the medical documents on the basis of which the petitioner/defendant intends to transfer the suit from Alipurduar to Siliguri.

This Court finds that the suit property is situated within the jurisdiction of Alipurduar Court and, accordingly, the plaintiff has filed the suit before the competent Court having jurisdiction. The medical certificate relied upon by the petitioner on the basis of which the petitioner intends to transfer the suit reveals that only the petitioner is suffering from osteo arthritis. It is not the case that the petitioner is bed ridden and is not in a position to move from the bed. In the Code

of Civil Procedure there is a provision for examination of the witness on commission.

The learned Counsel for the plaintiff has conceived that if the defendant is not in a position to appear before the Alipurduar Court, she can be examined on commission.

In view of the above, this Court finds that this is not a fit case to transfer suit from one Court to another Court. The application filed by the petitioner is misconceived and, accordingly, the same is dismissed.

CO No. 22 of 2023 is dismissed.

(Krishna Rao, J.)