

10.12.2024

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Ct 5

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1198 of 2024

Rajshekhar Sahu
Versus
Smt. Simmy Dey (Sahu)

Mr. Sambhunath Dey
... For the petitioner.

1. Challenging in effect, Order No.21 dated 16th December, 2023, whereby the learned Additional District Judge, Fast Track Court, Kalyani, Nadia, in Matrimonial Suit No. 657 of 2021, while considering the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, upon framing a preliminary issue as regards territorial jurisdiction of the learned Court to receive the application under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the “said Act”) had directed return of the divorce application on the ground of lack of territorial jurisdiction of such Court to entertain the same, the instant revisional application has been filed.

2. Mr. De, learned advocate appearing in support of the aforesaid revisional application would submit that though he does not impugn the judgment dated 16th September, 2023 as being perverse, but he would submit that the learned Court ought to have, while directing

return of the application, provided for adequate safeguard so that the Matrimonial suit could proceed upon being re-filed before a Court having territorial jurisdiction to entertain the same, from the stage where the suit had been returned. He would submit that his only object is to ensure expeditious disposal of the aforesaid suit and as such the limited challenge has been made.

3. Having heard the learned advocate for the petitioner, I may notice that the learned Court upon deciding of primary issue as regards territorial jurisdiction of the Court to entertain the proceeding on the basis of the averments made in the divorce petition and having regard to the statements made in paragraphs 21 and 26 and having noted that the petitioner and the opposite party last resided together in a rented accommodation outside the jurisdiction of this Court and also having noted that the petition had been presented without following the provisions of Section 19 of the said Act, had directed the return the divorce application along with Vakalatnama, with endorsement regarding the date of order of return, the date of presentation, the date of return, name of the party presenting it and reasons for the returning it. Having considered the above, I am of the view that there is no irregularity in the order passed by the learned Judge. Ordinarily, when a petition is returned on the ground of lack of territorial jurisdiction, the Court has

no power to regulate the future course of action. The document is only returned by making of endorsements as noted above on the said document. In the instant case, the learned Additional District Judge, Fast Track Court, Kalyani, Nadia, by reasons of lack of territorial jurisdiction of the Court to entertain the divorce petition under Section 13(ia) and 13(ib) of the said Act for the same having not been filed in accordance with the provisions contained in Section 19 of the said Act, had returned the said petition to the petitioner to present the same before the appropriate Court having jurisdiction.

4. As noted hereinabove, there is no irregularity in the order and the petitioner has also not raised any question as regards perversity. Mr. Dey, would however, by placing reliance on a judgment of the Hon'ble Supreme Court in the case of **Joginder Tuli –vs- S.L.Bhatia and another** reported in **(1997) 1 Supreme Court Cases 502** would submit that having regard to the facts of this case, since there was a direction to file his affidavit-in-chief, this Court should direct the matter to be proceeded before the Court having jurisdiction from the stage at which the petition was returned. I am of the view that the aforesaid judgment is distinguishable on facts. In the said case before the Hon'ble Supreme Court the parties had already adduced evidence. Such is not the case here. From the order sheet as placed before this Court it would transpire

that immediately after conciliation had failed, the Learned Trial Court by order no. 9 framed the issues. It is on the very next date that the application under Order VII Rule 11 of the, Code of Civil Procedure 1908 was filed by the opposite party.

5. Having regard thereto, I do not find any scope to grant any relief as prayed for. However, taking into consideration that the present revisional application has been pending before this Court since 2nd April, 2024 and the petitioner having already taken back the petition, the petitioner will be entitled to the benefit of the pendency of the aforesaid application before this Court, provided the divorce application is filed before the Court having jurisdiction within a period of one month from date.

6. With the above observations and directions, the revisional application is disposed of.

7. There shall be no order as to costs.

8. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)