

11.06.2025
Court No.652
Item No.73
sudipta

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 1259 of 2024

**Smt. Tanushree Datta Ghosh
Vs.
Sri Dipankar Ghosh**

Mr. Kallol Basu
Mr. Suman Banerjee
Mr. Ayushman Dasgupta

...for the petitioner

Mr. Saikat Debnath

...for the opposite party

1. Present petition has been filed for transfer of Act VIII Misc. Case No. 115 of 2023 pending before the learned Additional District Judge, Fast Track Court, 1st court at Basirhat to the Court of learned District Judge, Alipurduar.
2. Learned counsel for the petitioner submits that the petitioner was married to the opposite party / husband on 18th November, 2012 and from the said wedlock one daughter Aratrika Ghosh was born. Learned counsel submits that owing to temperamental differences the petitioner left the matrimonial home in January, 2018 along with the minor child and since then has been residing with her parents at Alipurduar. Subsequently, the marriage between the parties was dissolved by

mutual decree of divorce. The custody of the daughter remained with the petitioner. Learned counsel submits that even in the Misc. Case no. 115 of 2023 the respondent / husband has mentioned that at the time of divorce, it was settled between the parties that the daughter shall remain in custody with the petitioner and the husband shall have right to visit and see his minor daughter at least once in a month. Learned counsel submits that the present petitioner thereafter married to Dr. Deep Dutta and presently working as staff nurse at Falakata Super Specialty Hospital at Falakata, Alipurduar. Learned counsel submits that from the second marriage the petitioner has been blessed with another daughter. Learned counsel submits that the respondent / husband had also remarried. However, that marriage did not work and has since been dissolved. Learned counsel submits that minor daughter is studying at Alipurduar. It has further been submitted that Alipurduar is more than 700 kms from Basirhat and it would be too burdensome for the petitioner to come to Kolkata for attending the Trial Court. Learned counsel submits that even otherwise the Court of learned Additional District Judge, Fast Track Court, 1st Court, Basirhat has no territorial

jurisdiction as the minor child has ordinarily been residing at Alipurduar.

3. Learned counsel for the opposite party has opposed the transfer of the petition. Learned counsel submits that the respondent / husband is also working in Basirhat Hospital. Learned counsel submits that in the present proceeding the convenience of the wife alone cannot be considered. Learned counsel submits that it would be very inconvenient for the respondent / husband to attend to the proceeding if the matter is transferred to the court of learned District Judge, Alipurduar.
4. The facts which are not disputed that the petitioner / wife is residing separately since 2018 along with the minor daughter. It is also not disputed that at the time of divorce, it was settled between the parties that the custody of the child shall remain with the petitioner / wife. The distance between Basirhat and Alipurduar also cannot be disputed. It is also to be considered that the petitioner / wife is blessed with another daughter from the second marriage.
5. The Court in such cases though cannot ignore the convenience of the husband all together but has to

see that it should not be grossly inconvenient to the wife. The petitioner / wife is the sole care giver of the minor daughter born out of the wedlock. There is no mala fide or perversity on the part of the wife in seeking transfer of proceedings. Thus the balance of the parties would be met if the matter is transferred from the Court of learned Additional District Judge, Fast Track Court, 1st Court at Basirhat to the Court of learned District Judge, Alipurduar.

6. In addition to this, the Hon'ble Justice Dipankar Datta as His Lordship then was in **Subhadip Laskar Vs. Sanjukta Laskar 2011 SCC OnLine Cal 1252** while dwelling upon the concept "ordinarily resides" as, inter alia, held as follows:

"43. The legislature in its wisdom having used the words "where the minor ordinarily resides" and not where he actually or presently resides on the date of the application, Mr. Banerjee is right in his contention that the residence of the minor immediately prior to the application under the Act being filed by itself cannot be the determining factor. However, one cannot lose sight of the fact that the place of residence where the spouses lived together as husband and wife with the minor cannot also be the determining factor in deciding the jurisdiction of the Court but could be considered as one of the circumstances in determining the ordinary place of residence of the minor by drawing a presumption. If indeed the residence of the natural guardian would have to be construed as the determining factor, section 9(1) would have been worded differently to authorize the District Court having jurisdiction in the place where the natural guardian ordinarily resides to receive the application in respect of guardianship. Also, whether or not a minor child has been stealthily

or forcefully removed from the residence where he had been residing from birth must be established free from all doubts before an objection that the District Court trying the application filed under the Act, in terms of provisions contained in section 9 thereof, has no jurisdiction could be sustained. In such circumstances, in my view, the rough and ready workable test that is required to be applied is, whether shifting of the child from his father's residence to somewhere else where his mother takes him is occasioned in the normal run of events or by design to create jurisdiction in any particular District Court of her choice or not. Applying this test to the facts at hand, it appears that the minor child has been residing at Dhakuria, at his maternal grandfather's place as the normal outcome of marital discord between the parties. There is no material, at least at this stage, to return a finding that Master Soham was stealthily removed. Also, considering the circumstance that a wife leaving her matrimonial home on account of marital discord and taking shelter in her father's house with her child is not a rare feature of present day society, there can be no two opinions that factum of Master Soham residing at his maternal grandfather's residence with his mother is not one which could be construed as a result of compulsion so as to negate the jurisdiction of the District Court of South 24-Parganas to entertain the application for guardianship filed by the opposite party."

7. In the present case the shifting of the minor child from the matrimonial house to the place where petitioner / wife started residing after the separation is in the normal course of events and cannot be termed any design to create jurisdiction in any particular District Court. The shifting of the child was then normal outcome of marital discord between the parties. There is no allegation that the minor child was removed from the custody of the father.

8. In view of the discussion made hereinabove, the Act VIII Misc. Case No. 115 of 2023 is withdrawn from the Court of learned Additional District Judge, Fast Track Court, 1st Court at Basirhat and assigned to the competent court of jurisdiction of learned District Judge Alipurduar.

9. Transferor court is directed to send the entire case record to the transferee court.

10. The petition stands disposed of.

11. All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)