

D/L- 12
02/07/2025
Ct. No.-6
Aritra

C.O. 3517 of 2024

With

CAN 1/2024

Smt. Urvashi Poddar

Vs.

Sri Hemant Poddar

Mr. Kushal Chatterjee

Mr. Debrup Chaudhury

...for the petitioner

Mr. Suhrid Sur

Ms. Monalisa Das

....for the opposite party

Though this matter is appearing under the heading 'Extension of Interim Order' but with the consent of the learned advocates for the respective parties the main civil revision application is taken up for final hearing.

The learned advocates appearing for the respective parties advanced their submissions on the merits of the civil revision application.

This application under Article 227 of the Constitution of India is at the instance of the mother/petitioner and is directed against an order being No.8 dated April 9, 2024 passed by the learned District Judge, South 24-Parganas at Alipore in Act VIII Case No.217 of 2022.

By the order impugned the application under Order 7 Rule 11 of the Code of Civil Procedure Stood rejected.

Mr. Chatterjee, learned advocate appearing for the petitioner submits that the minor is ordinarily residing within the jurisdiction of the Siliguri Court and the learned Court at Alipore lacks territorial jurisdiction to try and entertain the instant Act VIII proceeding.

Mr. Sur, learned advocate appearing for the father/opposite party places reliance upon a decision of the Hon'ble High Court at Allahabad reported at **(2024) 1 HCC (All) 496** in support of his contention that in order to decide ordinary residence of the minor the learned judge have to hold an enquiry in that regard.

In reply Mr. Chatterjee, learned advocate for the petitioner/mother placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Ruchi Majoo vs. Sanjeev Majoo**, reported at **(2011) 6 SCC 479** and places reliance upon paragraph 24 of the said decision wherein it has been held that whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact or it may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question of law capable of being answered without an enquiry into the factual aspects of the controversy.

By the order impugned the application under order 7 Rule 11 of the Code of Civil Procedure stood rejected. It appears that the learned District Judge while passing the

order impugned did not make any enquiry as to the ordinary residence of the petitioner.

Mr. Chatterjee would vehemently contend that the opposite party herein in the application under Act VIII case has admitted that the minor is ordinarily residing within the jurisdiction of the Siliguri Court.

Such aspect of the matter was not considered by the learned District Judge while passing an order under Order 7 Rule 11 of the Code of Civil Procedure.

Be that as it may, the contention of the petitioner is that the Alipore Court lacks jurisdiction to decide the present Act VIII case and it is only the Siliguri Court which has the jurisdiction to try and entertain the present Act VIII case. Therefore it is not a case of rejection of plaint but for return of plaint to be presented before the proper forum. For such reason, the order impugned is not interfered with.

In the light of the submission made by the learned advocate for the respective parties, this Court is of the considered view that the interest of justice would be subserved if the petitioner is granted liberty to file an appropriate application under the provisions of Order 7 Rule 10 of the Code of Civil Procedure. If such an application is filed the learned Additional District Judge, 7th Court at Alipore is requested to consider the said application, if any, filed give an opportunity to the opposite party herein to file a written objection thereto and dispose

of the same after giving an adequate opportunity of hearing to the respective parties and by passing a speaking order. Needless to mention that while deciding the application proposed to be filed by the petitioner herein, the learned Additional District Judge shall not be swayed with the observations made in the impugned order.

With the above observations CO 3517 of 2024 and connected application stands disposed of.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)