

S/L 36
03.01.2025
Court. No. 3
*Suvayan/
Sourav*

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

CO 34 of 2023

**Subir Pal
Vs.
Rumpa Pal (Dey)**

*Mr. Subham Ghosh
Mr. Mayank Roy*

...for the opposite party.

1. None appears on behalf of the petitioner/husband though learned Advocate for the opposite party/wife is present.
2. On perusal of the earlier orders dated 23.09.2024 and 25.07.2024 it appears that on the said two occasions adjournments were sought for on behalf of the petitioner.
3. Since none appears on behalf of the petitioner today and since no accommodation has been sought for on behalf of the petitioner and also since the matter is pending for a considerable length of time this Court proposes to take up the matter for hearing in absence of the petitioner.
4. In this revisional application the Order No. 48 dated 24.11.2022 as passed in Misc. (J) Case No. 11 of 2016 arising out of Mat. Suit No. 166 of 2014 by learned District Judge, Coochbehar is impugned.
5. By the impugned order the learned trial court allowed the petitioner/wife's (opposite party/wife herein) application under Order IX Rule 13 of the Code of Civil Procedure and consequently, *ex parte*

order and decree dated 16.07.2015 as passed in Mat. Suit No. 166 of 2014 was set aside.

6. In course of his submission learned Advocate for the opposite party/wife herein at the very outset draws attention of this Court to the impugned order which is under challenge before this Court. Attention of this Court is drawn to the last but one page and the last page of the order impugned. It is submitted that while passing the impugned judgement in a proceeding under Order IX Rule 13 of the Code of Civil Procedure learned trial court categorically came to a finding that the petitioner/husband herein purposely misled the trial court in sending summons in the name of the defendant/wife of the said suit at a wrong address. It is submitted further that the learned trial court rightly noticed that the address as has been mentioned in the cause title of the plaint of Mat. Suit No. 166 of 2014 (wrongly typed as Mat. Suit. No. 166 of 2014) is neither the correct addresses of the defendant/wife nor the last known address of her. It is further submitted that learned trial court has also come to a correct finding that on account of furnishing a wrong address the plaintiff/husband also misled the trial court to effect substituted service upon the defendant/wife though no appropriate case has been made out for resorting to the provision of Order V Rule 20 of the Code of Civil Procedure.

7. It is thus submitted on behalf of the opposite party/wife herein that there is no error of fact and/or error of law on the part of the learned trial court in passing the impugned order while setting aside the *ex parte* order and decree as passed in Mat. Suit No. 166 of 2014 and, therefore, no case has been made out for invoking the plenary power under Section 227 of the Constitution of India.
8. On perusal of the entire materials as placed before this Court and after hearing the learned Advocate for the opposite party/wife herein it reveals that learned trial court while deciding the application under Order IX Rule 13 of the Code of Civil Procedure came to a specific finding based on oral evidence as well as exhibited documents that the petitioner/husband herein who is the plaintiff before the learned trial court in Mat. Suit No. 166 of 2014 had deliberately furnished the wrong address of the defendant/wife in the cause title of the plaint and thereby misled the said trial court to issue summons at a wrong address where the defendant/wife (opposite party/wife herein) never resided.
9. Learned trial court while passing the impugned order also noticed that the marriage certificate between the plaintiff and the defendant bears the correct addresses of the parties which has been deliberately changed in the plaint and no explanation has been furnished by the husband in

the proceeding being Misc. (J) Case No. 11 of 2016 as to what prompted him to furnish a wrong address of the defendant wife especially when it is the case of the defendant/wife that she never resided in the said address.

10. It further appears to this Court that learned trial court also rightly noticed that the provision of Order V Rule 20 of the Code of Civil Procedure ought not to have been applied in Mat. Suit No. 166 of 2014 since while disposing Misc. (J) Case No. 11 of 2016 the learned trial court has come to a specific finding that on account of furnishing of wrong address by the plaintiff/husband no case has been made out for objective satisfaction of the Court that the defendant/wife is either avoiding the service or is keeping herself away in order to avoid service.
11. As rightly pointed out by the learned Advocate for the opposite party/wife herein that the learned trial court while disposing Misc. (J) Case No. 11 of 2016 came to a finding that since summons to the said suit were sent to an improper address deliberately, the pre-condition of the substituted service was not fulfilled.
12. It thus appears to this Court that while passing the impugned order in a proceeding under Order IX Rule 13 of the Code of Civil Procedure, the learned trial Court on the basis of oral and documentary evidence as led by the opposite party/wife herein

came to a finding that the petitioner/husband herein who is the plaintiff before the learned trial Court in MAT No. 166 of 2014 had practically misled the Court by furnishing a wrong and incorrect address of the wife in the cause title of the plaint.

13. It further appears to this Court that the learned trial Court while passing the impugned order observed a series of miscarriage of justice on account of furnishing incorrect address of the defendant and thus, rightly noticed that no case has been made out for effecting substituting service as against the defendant (opposite party/wife herein) in MAT No. 166 of 2024.
14. In view of the discussion made hereinabove, this Court finds no reason to interfere with the order impugned.
15. Accordingly, the instant revisional application being **CO 34 of 2023** is dismissed.
16. There shall, however, be no order as to costs.

(Partha Sarathi Sen, J.)