

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Justice Bibek Chaudhuri

C.O. 683 of 2019

**Smt. Soma Guha nee Banerjee
Vs.
Sri Subhrajit Guha**

For the petitioner : Mr. Suranjit Ghosh

For the respondent : Mr. Kamalesh Bhattacharyay
Mr. Jakir Hossain
Mr. Shahan Shah

Heard on : 23.12.2020

Judgment on : 23.12.2020

Bibek Chaudhuri, J.:

The petitioner is the wife of the opposite party. The opposite party has filed a matrimonial suit for divorce being Matrimonial Suit No.192 of 2018 before the learned District Judge at Cooch Behar. It

is the case of the petitioner that after being driven out from her matrimonial home she has been residing at Bansdroni within the jurisdiction of the learned District Judge, South 24 Parganas at Alipore. The petitioner has further stated in her application under Section 24 of the Code of Civil Procedure that she has no source of income. If she is compelled to attend the Court of the learned District Judge at Cooch Behar to contest the said suit, it will cause tremendous financial hardship to her. Distance between Cooch Behar and Kolkata is more than 600 kilometers on one side. So, she will have to make overnight journey to reach Cooch Behar, stay in a hotel and contest the suit. This will incur not only financial burden upon the petitioner but also physical stress to her. By filing a supplementary affidavit it is further stated by the petitioner that she is hard of hearing and she has been declared 60 per cent disabled due to her impairment.

The case of the petitioner further is that she has filed an application under Section 125 of the Code of Criminal Procedure which is pending before a competent Court of the learned Magistrate at Alipore. The opposite party has entered appearance in the said proceeding. Therefore, the opposite party will not face any inconvenience to contest the suit at Alipore. So, is the application for transfer of the matrimonial suit.

Learned advocate for the petitioner has submitted to the tune of the averment made in the application. Learned advocate for the opposite party, on the other hand submits that from the application under Section 24 of the Code of Civil Procedure it is ascertained that the opposite party carries transport business. If the opposite party is compelled to contest the suit at Alipore coming all the way from Cooch Behar, he will also suffer inconvenience so far as his business is concerned.

It is further pointed out by the learned advocate for the opposite party that the matrimonial suit was filed against the petitioner on the ground of desertion. The petitioner entered appearance in the said suit at Cooch Behar. She filed written statement but subsequently she failed to appear before the Court of trial and the suit is fixed for ex parte hearing. At this stage, if the suit is transferred to any other Court from the original Court of filing, the opposite party will suffer irreparably.

It is also submitted by the learned advocate for the opposite party that in such a case where the parties to the suit reside at far off distance and both the parties may have reasonable ground of facing inconvenience, proper course would be to transfer the case somewhere in a Court situated at midway so that both the parties may not suffer much inconvenience. In support of his contention the learned advocate for the opposite party refers to a decision of

the Division Bench of this Court in the case of **Smt. Pritikana Banerjee versus Rani Sankar Banerjee** reported in **AIR 1987 Calcutta 269**. Placing reliance on the aforesaid decision it is proposed by the learned counsel for the opposite party that if the matrimonial suit is transferred to the Court of the learned District Judge, Malda, inconvenience of both the parties may be lessened.

In reply to the submission made by the learned advocate for the opposite party it is urged by the learned advocate for the petitioner that if the petitioner is directed to travel to Malda from Kolkata making overnight journey, she will face similar inconvenience as she is facing to appear before the learned District Judge, Cooch Behar.

The opposite party has filed affidavit-in-opposition controverting the allegation made out in the application under Section 24 of the Code of Civil Procedure.

Having heard the learned advocate for the petitioner and the opposite party and on perusal of the application under Section 24 of the Code of Civil Procedure as well as the affidavit-in-opposition the following undisputed factual circumstances reveal:-

- (i) The petitioner is the legally married wife of the opposite party.
- (ii) The petitioner at present has been residing at Bansdroni.

- (iii) In matrimonial suit No.192 of 2018 the petitioner as respondent entered appearance and filed written statement before the learned District Judge at Cooch Behar
- (iv) Subsequently, the petitioner could not attend the learned Court of trial and accordingly, the suit has already been fixed for ex parte hearing.

It is also undisputed that the distance between Kolkata and Cooch Behar in one way is more than 600 kilometers. It takes about 30 hours to reach Cooch Behar from Kolkata by train. It is not seriously disputed that the petitioner is differently abled person having 60 per cent disability of hearing.

Be that as it may, it is the consistent view of the Hon'ble Supreme Court while disposing of the application under Section 24 of the Code of Civil Procedure arising out of matrimonial proceeding that the petitioner/wife's convenience is the paramount consideration which should be taken care of. In support of my observation the decision of the Hon'ble Supreme Court in **Rajani Kishore Pardeshi vs. Kishore Babulal Pardeshi** reported in **2005 (12) SCC 237** and **Tejalben versus Mihirbhai Bharatbhai Kothari** reported in **2016 (3) SCC 69** may be relied on. From the factual position of the instant case it is clear that the petitioner is

willing to contest the Matrimonial Suit No.192 of 2018 pending before the learned District Judge at Cooch Behar. For such reason she filed written statement but subsequently her failure to attend the Court of the learned District Judge at Cooch Behar goes to suggest practical inconvenience faced by her in attending the Court of trial travelling a distance of 600 kilometers. The opposite party is a man of 52 years. He is otherwise physically fit. If the comparative convenience and inconvenience of the parties is taken into consideration, the balance of convenience tilts in favour of the petitioner.

For the reasons stated above, I am inclined to allow the instant application under Section 24 of the Code of Civil Procedure on contest, however, without costs.

Matrimonial Suit No.C.O. 683 of 2019 pending before the learned District Judge, Cooch Behar be transferred to the Court of the learned District Judge, South 24 Parganas at Alipore for trial and disposal.

The department is directed to send a plain copy of this order be sent to both the Courts below for information and compliance.

The parties are at liberty to act upon the server copy of this order.

(Bibek Chaudhuri, J.)

Suman (AR)
Item No.05
Ct.09