

**02-08-2022**  
Item no.91  
**Subrata**

**IN THE HIGH COURT AT CALCUTTA**  
Civil Revisional Jurisdiction

**CO. No.55 of 2022**  
**Swagata Singha Roy @ Swagata Singha**  
**-vs-**  
**Sri Avijit Singha**

Mr. Kallol Mondal  
Mr. Krishan Ray  
Mr. Souvik Das  
Mr. Anamitra Banerjee  
Mr. Shamsheer Ansari ...for the petitioner

Mr. Soumyajit Das Mahapatra  
...for the opposite party

This revision arises out of an application under section 24 of the Code of Civil Procedure, 1908 seeking transfer of a matrimonial suit from the court of learned Additional District Judge, Redesignated Court, Midnapore, Paschim Medinipur to the Court of learned Additional District Judge at Barrackpore, North 24 Parganas.

To put it succinctly, it is stated by the petitioner that her marriage with the opposite party was solemnized on May 20, 2015 under the provisions of the Special Marriage Act, 1954. After their marriage, they lived together and their marriage was duly consummated. Out of their wedlock, a female child was born on May 18, 2016.

The petitioner complains that soon after her marriage, the opposite party subjected her to cruelty by various means. Unable to bear with the torture, she left her matrimonial home and started residing at a rented house near her parental home at Barrackpore with her minor child.

The petitioner states that on the allegations of torture inflicted on her she lodged an FIR at Titagarh police station and the FIR was registered as Titagarh P.S. Case No.729 of 2021 dated October 7, 2021 under sections 498A/406/307, IPC. Besides, in order to sustain her livelihood, the petitioner has filed an application under section 125, Cr.P.C. registered as Misc Case No. 799 of 2021 against the opposite party seeking maintenance allowance. Moreover, the petitioner brought an application under sections 12/23 of the Protection of Women from Domestic Violence Act against the opposite party. Those cases are pending in the Court of learned Additional Chief Judicial Magistrate at Barrackpore.

The petitioner submits that after getting summons, she came to know that the opposite party has filed a matrimonial suit being No.940 of 2021 against her seeking restitution of conjugal rights and the suit is pending in the Court of learned Additional District Judge, Redesignated Court at Midnapore, Paschim Medinipur. The distance between her home where she resides and the concerned Court at Midnapore is nearly 150 kms. In such circumstances, it will be hardship for her to travel a long distance to attend the matrimonial proceeding before the aforesaid Court at Midnapore. Hence, the prayer for transfer.

Learned lawyer for the petitioner submits that the facts and circumstances as depicted in the revisional application will demonstrate that the petitioner will face immense inconvenience to appear before the concerned Court at Midnapore to participate in the hearing of the matrimonial suit. Learned lawyer further submits that though the marriage between the parties was registered under the Special Marriage Act, the OP has brought the

matrimonial suit under Section 9 of the Hindu Marriage Act which is not legally entertainable. On such submission, learned lawyer urges that the matrimonial suit should be transferred.

Learned counsel for the opposite party, on the other hand, opposes the prayer made on behalf of the petitioner. Learned Lawyer points out that if the matrimonial suit is not legally tenable, the petitioner, instead of preferring the instant revisional application, ought to have approached the learned court below for rejection of the application/plaint under Order 7 Rule 11 of the Code of Civil Procedure. Learned lawyer further submits that after his client brought the matrimonial suit, the petitioner brought the criminal case, a maintenance case under section 125 CrPC and a proceeding under sections 12/23 of the Protection of Women from Domestic Violence Act. According to learned counsel, all the aforesaid cases brought by the petitioner are the result of her afterthought and the cases shall be deemed to have been brought for some ulterior motive. Under such conspectus of circumstances, learned lawyer emphasizes that the revisional application should be dismissed.

What I find from the averments in the revisional application supported by affidavit and the materials on record, the distance between the place where the petitioner is now residing and the court at Midnapore is nearly 150 kms. The child of the petitioner is minor. The petitioner has no source of income. Under such circumstances, it will be hardship for her to appear before the court at Midnapore to attend the matrimonial proceeding. Moreover, the case under Sections 498A/406/307 IPC, the maintenance case under Section 125 CrPC and the proceeding under sections 12/23 of the Protection of Women from Domestic Violence Act brought

by the petitioner are all pending in the court of learned ACJM at Barrackpore for which the opposite party has to appear before the concerned courts at Barrackpore.

In a catena of decisions, the Hon'ble Apex Court and this Court have held that inconvenience of the wife should be of paramount consideration while disposing of an application under section 24 CPC.

Having heard learned counsels appearing for the parties and considering the balance of convenience and inconvenience of the parties, I feel that it would be wise to withdraw the matrimonial suit from the concerned Court at Midnapore, Paschim Medinipur and transfer the suit to the Court of learned Additional District Judge, 1<sup>st</sup> Court, Barrackpore for disposal.

Accordingly, the revisional application is allowed by the following Order:

Let the matrimonial suit being Mat Suit No.940 of 2021 be withdrawn from the Court of learned Additional District Judge, Redesignated Court, Midnapore, Paschim Medinipur and the suit be transferred to the court of the learned Additional District Judge, 1<sup>st</sup> Court, Barrackpore for disposal.

The learned Additional District Judge, 1<sup>st</sup> Court, Barrackpore may either dispose of the suit himself/herself or transfer it to any of the courts of learned Additional District Judge, Barrackpore for disposal.

The learned Additional District Judge, Redesignated Court at Midnapore is directed to transmit the case record of Mat. Suit No.940 of 2021 to the learned transferee court immediately after receipt of a copy of this

order.

Let a copy of this order be communicated to both learned Courts below forthwith.

Thus, CO No.55 of 2022 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]