

**26-07-2022**  
Item no.69  
**Subrata**

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

**CO No.316 of 2022**  
**Smt. Nibedita Roy (Pal)**  
**-vs-**  
**Sri Surya Sekhar Pal**

Mr. Sagar Saha

...for the petitioner

Learned counsel for the petitioner seeks leave to correct the name of the transferee court as Additional District Judge, instead of District Judge, Durgapur in the cause title of the revisional application.

Leave is granted to correct the same.

Affidavit of service filed in court be taken on record.

It appears from the affidavit of service that notice has duly been served upon the opposite party as well as learned counsel who represents the opposite party before the learned court below. Despite notice, there is no representation on behalf of him. Hence the revisional application is taken up for hearing in absence of the opposite party.

The petitioner in this revisional application under section 24 of the Code of Civil Procedure, 1908 is seeking transfer of a matrimonial suit filed by the opposite party from the court of learned District Judge, Birbhum at Suri to the court of learned Additional District Judge, Durgapur, Paschim Bardhaman.

Briefly stated, the petitioner states that her marriage with the opposite party was solemnized and registered on February 17, 2014. The marriage between them was duly consummated; and out of their wedlock, a male child

namely Aryaman Pal was born on January 26, 2016.

The petitioner complains that the opposite party subjected her to cruelty, both physically and mentally. Ultimately, she was driven out of her matrimonial home on September 26, 2021. Since then she has been residing at her parental home at Sarada Pally, Rail Par, P.O. Panagarh Bazar, P.S. Kanksa in the district Paschim Bardhaman.

On the allegations of torture upon her, the petitioner lodged a complaint under section 156(3) CrPC in the court of learned ACJM, Durgapur. By virtue of an order passed by learned ACJM, Durgapur, one Kanksa P.S. Case No.34 of 2022 dated February 1, 2022 under sections 498A/323/406/506/34 IPC and under sections 3/ 4 Dowry Prohibition Act, 1961 has been registered against the opposite party and the proceeding is pending in the court of learned ACJM, Durgapur. Besides, the petitioner has filed a maintenance case under section 125 CrPC against the opposite party seeking maintenance allowance in the court of learned Judicial Magistrate, Durgapur.

After getting summons, the petitioner came to know that the opposite party brought a matrimonial suit being No.226 of 2021 in the court of learned District Judge, Birbhum, Suri seeking dissolution of their marriage.

The petitioner states that she is a school teacher and her father is an aged person. The distance between her parental home and the concerned court at Birbhum is about 75 kms. Under such circumstances, it will be hardship for her to appear before the concerned court at Birbhum to attend the matrimonial proceeding. Hence this prayer.

Since the opposite party has chosen not to contest the s.24 CPC application, it will be presumed that the

averments/allegations made in the application remain uncontroverted.

Learned counsel in this context citing a decision of the Hon'ble Supreme Court dated July 18, 2022 in Civil Appeal No.4894 of 2022 [arising out of SLP(C) No.16465 of 2021 – N.C.V. Aishwarya v. A.S. Saravana Karthik Sha] submits that the apex court transferred a matrimonial suit on the grounds that the appellant had none to accompany her to the court where the matrimonial suit was pending and also on the grounds that a maintenance proceeding was pending at a court under whose jurisdiction the appellant resided.

What I find from the uncontroverted averments in the s.24 CPC application, a proceeding under sections 498A/323/406/506/34 IPC and under sections 3/ 4 Dowry Prohibition Act, 1961 brought by the petitioner is pending in the learned ACJM, Durgapur. Besides, a section 125 CrPC proceeding is pending in the court of learned Judicial Magistrate at Durgapur. The petitioner's child is minor and her father is an aged person. These facts demonstrate that the petitioner will face hardship, if she is to appear before the court at Suri, Birbhum to attend the matrimonial proceeding.

Having heard learned counsel for the petitioner and considering the facts and circumstances, I am of the view that the petitioner has been able to make out a case to get the matrimonial suit transferred from the court of the learned District Judge, Birbhum at Suri.

In view of the above, the revisional application is allowed by the following order.

Let the matrimonial suit being No.226 of 2021 be withdrawn from the court of learned District Judge,

Birbhum at Suri and the suit be transferred to the court of learned Additional District Judge, 1<sup>st</sup> Court at Durgapur for disposal.

The learned District Judge, Birbhum is directed to transmit the case record of the aforementioned matrimonial suit to the transferee court immediately after receipt of a copy of this order.

The department is directed to communicate a copy of this order to both the learned courts below forthwith.

With the above, CO No.316 of 2022 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]