

25-08-2022
Item no.163
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.322 of 2022
Sri Amit Das
-vs-
Smt. Soumi Chatterjee (Das)

Mr. Sanjib Seth ...for the petitioner

Mr. Subhendu Bandyopadhyay ...for the opposite party

The petitioner in this application under section 24 of the Code of Civil Procedure, 1908 is seeking transfer of a matrimonial suit filed by the opposite party-wife from the court of learned Additional District Judge, 2nd Court, Serampore, Hooghly to any court of learned Additional District Judge, Howrah.

Admittedly, the petitioner married to the opposite party on August 6, 2019. The marriage between them was duly consummated, but no child was born. It is not in dispute that the opposite party is now residing at her parental home at 34/1, K.D. B. Lane, Serampore, P.S. Serampore, district Hooghly.

The petitioner alleges that the opposite party, in order to harass him, brought a matrimonial suit being No.466 of 2020 in the court of learned Additional District Judge, Serampore. Subsequently, the suit was transferred to the court of learned Additional District Judge, 2nd Court, Serampore and the suit has been re-numbered as MAT Suit No.163 of 2021. The petitioner avers that on December 21, 2021 the matrimonial suit was fixed for hearing before the concerned court at Serampore. After appearing before the court, while the petitioner was walking towards the Serampore Railway Station, then some unknown persons

threatened him not to come to Serampore court in future, otherwise he would face dire consequences. The petitioner alleges that he went to Serampore police station to make a complaint, but the duty officer of the police station refused to take any complaint from him. The petitioner states that the distance between his house and the court at Serampore is about 115 kms. Hence it will be inconvenient for him to attend before the concerned court at Serampore travelling the long distance. The distance between his residence and Howrah is 90 kms. Under such circumstances, the petitioner seeks transfer of the matrimonial suit to the concerned at Howrah.

The opposite party by filing an affidavit-in-opposition denies the averments and allegations as made in the revisional application against her by the petitioner. The opposite party states that the distance between the petitioner's residence and the court at Serampore is about 73.7 kms. She has brought the matrimonial suit seeking restitution of conjugal rights so that she may happily lead her marital life peacefully. Though she has no source of income and she survives on the bounty of her retired father, she has not brought any maintenance case against the petitioner. On such grounds, the opposite party seeks dismissal of the revisional application.

Learned counsel appearing for the petitioner submits that it will be inconvenient for his client by travelling a long distance to appear before the court at Serampore; and if the suit is transferred to the competent court at Howrah, it would be convenient for him. In support of his submission, learned counsel has referred to an order dated December 12, 2019 passed by a single Bench of this court in CO No.1792 of 2019. Placing reliance on the observations made by this court learned counsel submits that only the inconvenience of the wife

should not always be a paramount consideration while disposing of a transfer application.

On the other hand, learned counsel for the opposite party by referring to section 19(iiiia) of the Hindu Marriage Act, 1955 argues that in case the wife is the petitioner, any application under the Hindu Marriage Act shall be filed in the court under whose jurisdiction the wife resides. Learned counsel further submits that if the matrimonial suit is transferred to the concerned court at Howrah, his client will face immense hardship. Learned counsel reminds of the catena of decisions passed by this court that inconvenience of the wife should be of paramount consideration while disposing of a s.24 CPC application.

As stated above, admittedly, the opposite party is the legally married wife of the petitioner. It is not in dispute that the marriage between them was solemnized at the parental home of the opposite party. Section 9 of the Hindu Marriage Act, 1955 enjoins as under.

“9. Every petition under this Act shall be present to the district court within the legal limits of whose ordinary original civil jurisdiction – (i) the marriage was solemnized; or (ii) the respondent, at the time of presentation of the petition, resides; or (iii) the parties to the marriage last reside to come; (iiia) in case the wife is the petitioner where she is residing on the date of presentation of the petition.”

As observed above, the opposite party under some compelling circumstances is now residing at her parental home addressed above. Therefore, in terms of s.19(iiiia) of the 1955 Act, an application under s.9 should be filed in the court under whose jurisdiction the wife presently resides. That being the legal scenario, the matrimonial suit filed by the opposite party has been filed in the appropriate court.

The petitioner alleges that on December 21, 2021 while he was returning towards the Serampore Railway Station after attending the matrimonial proceeding, some unknown persons threatened him with dire consequences. However, as admitted by the petitioner, no iota of document is with the petitioner to show that he was threatened with dire consequences. Therefore, the grounds taken by the petitioner in this regard are not acceptable.

It is true that in a catena of decisions, the Hon'ble Apex Court has held that inconvenience of the wife should be of paramount consideration while disposing of an application under section 24 CPC.

In that view of the matter and in terms of sections 9(i) and 9(iii) of the Hindu Marriage Act, 1955, I do not find any justification to transfer the matrimonial suit from the court of learned Additional District Judge, Serampore to any court at Howrah.

With the above, the revisional application – CO No.322 of 2022 – stands dismissed. No order as to costs.

Interim order, if any, stands vacated.

Certified copy of this order, if applied for, shall be given to the parties.

[Rabindranath Samanta, J]

