

C.O. 366 OF 2022

Susmita Biswas

Vs.

Sudip Halder

Ms. Karabi Roy

... For the Petitioner

Affidavit-of-service, filed by the petitioner, be kept on record.

The instant revisional application arises out of an application under Section 24 of the Code of Civil Procedure seeking transfer of a matrimonial suit from the court of the learned Additional District Judge, 3rd Court, Malda to the learned Additional District Judge, Tehatta, Nadia.

To put precisely, it is stated by the petitioner Susmita Biswas that she was married to the opposite party Sudip Halder on 17th January, 2020 as per the Hindu rites and customs. After her marriage with the opposite party, the petitioner started living with him as his wife and their marriage was duly consummated. But soon after their marriage, the opposite party and his family members on the demand for Rs.2 lakh (Rupees two lakh) subjected the petitioner to cruelty, physically and mentally. Besides, the opposite party mentally tortured her having an illicit relationship with another woman.

On 7th February, 2021 the opposite party brutally assaulted the petitioner and tried to throttle her, however, the neighbours of her rescued her. On such allegations, the petitioner lodged an FIR at the local police station and the FIR was registered as Palashipara P.S. Case No. 71 of 2021 under Sections 498A/307/34 of the Indian Penal Code. This case is pending before the learned Additional Chief Judicial Magistrate, Tehatta. Unable to bear with the torture meted out to her the petitioner left her matrimonial home and started residing at her parental home.

The petitioner has filed an application under Section 12 of the Protection of Woman from Domestic Violence Act in the court of learned Additional Chief Judicial Magistrate, Tehatta and the application has been registered as Misc. Criminal Case No. 19 of 2021. Besides, the petitioner has filed an application under Section 94 of the Code of Criminal Procedure praying for recovery of the Stridhan articles. The opposite party appeared before the Court of the learned Additional Chief Judicial Magistrate, Tehatta in connection with the aforesaid cases.

The petitioner complains that in order to harass her, the opposite party has filed a Matrimonial Suit being No.477 of 2021 in the court of the learned District Judge, Malda under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. This case, on transfer, is

now pending in the Court of the learned Additional District Judge, 3rd Court, Malda.

The petitioner submits that the distance between Malda Court and Tehatta is more than 200 kilometer. To attend the matrimonial proceeding, the petitioner with the help of her father had to travel the long distance from Tehatta and on every day she had to spend Rs.2000/- (Rupees two thousand). The petitioner having no source of income is in financial distress to spend such money to attend the court at Malda. In such circumstances, the petitioner prays for transfer of the aforesaid matrimonial suit to the concerned court at Tehatta.

Learned advocate appearing for the petitioner submits that the opposite party appears before the concerned court at Tehatta to contest the aforesaid proceedings brought against him by the petitioner. Learned advocate points out that the opposite party, in fact, is a resident of Tehatta sub-division, but he works for gain at Malda. On this score, there will be no difficulty on the part of the opposite party to appear before the court at Tehatta if matrimonial suit is transferred to the concerned court at Tehatta. In the absence of the opposite party despite service of notice upon him, the facts and circumstances as narrated in the application remain uncontroverted.

What I find from the documents on record, a criminal case under Section 498A/307/34 of the Indian

Penal code is pending in a court at Tehatta. Besides, an application under Section 12 of the Protection of Woman from Domestic Violence Act is also pending before the court of the learned Additional Chief Judicial Magistrate, Tehatta. That apart, a proceeding under Section 94 of the Code of Criminal Procedure is also pending before a court at Tehatta. There is nothing to disbelieve that the opposite party is ordinarily a resident of Tehatta subdivision. The distance between Tehatta and Malda is more than 200 kilometers.

Having heard learned advocate for the petitioner and considering the facts and circumstances as narrated in the application I think that if the aforesaid matrimonial suit is transferred to the concerned court at Tehatta, it will be conducive to the interest of justice.

In view of the above, the revisional application is allowed.

Let the Matrimonial Suit being No.477 of 2021 pending in the court of the learned Additional Chief Judicial Magistrate, 3rd Court, Malda be transferred to the court of the learned Additional District Judge, Tehatta, Nadia for disposal.

The learned Additional District Judge, 3rd Court, Malda is directed to transmit the case records of the matrimonial suit to the learned transferee court forthwith after receipt of a copy of this order.

Let a copy of the order be communicated to both the learned courts below for information and compliance.

Accordingly, the revisional application stands disposed of.

No order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Rabindranath Samanta, J.)