

Ct. 02.8
No. 2022
14

94
&
95
akb

C.O. 438 of 2022
Smt. Arpita Dutta
-Versus-
Sri Subhabrata Dutta
With
C.O. 510 of 2022

Mr. Jayanta Kumar Mondal
Mr. Sayantan Rakshit ...For the Petitioner

Mr. Jyoti Prakash Chatterjee
Mr. Sayan Kanjilal ...For the Opposite Pary

The revisional applications, being C.O. 438 of 2022 under Section 24 of the Code of Civil Procedure has been preferred seeking transfer of a matrimonial suit and C.O. 510 of 2022 seeking transfer of one Act-VIII case are taken up for hearing.

I have heard learned Lawyers appearing for the parties.

Learned Lawyer appearing for the petitioner submits that the facts and circumstances as narrated by the petitioner in both the two revisional applications will demonstrate that the petitioner will face immense hardship if she has to appear before the Court of the learned Additional District Judge at Kalna, District – Purba Bardhaman to attend the matrimonial proceeding as well as the proceedings of Act-VIII case.

Learned Lawyer by citing a decision in the case of *Kaberi Roy (Bhattacharya) @ Kaberi Bhattacharya Vs. Pratik Roy*, reported in 2021 (1) ICC 1083 (Cal.) submits that since the child of the petitioner is ordinarily residing with her at her parental home, the Act-VIII case has brought by the opposite party needs to be heard by the learned District Judge, Hooghly at Chinsurah. On such score, he submits that both the matrimonial suit and the Act-VIII case be transferred

from the concerned Court at Kalna to the learned District Judge, Hooghly at Chinsurah.

Learned Lawyer appearing for the opposite party submits that a ground has been taken by the petitioner that the distance between the parental home of the petitioner and the Court at Kalna is long, but in fact the distance between the parental home of the petitioner and the Court at Kalna is lesser than that of the distance between her parental home and the Court at Chinsurah. Contending grounds as stated by the petitioner in the application, learned Lawyer submits that both the revisional applications preferred by the petitioner are liable to be dismissed.

The facts which are necessary for disposal of the revisional applications may be summarized as under :-

Petitioner, Smt. Arpita Dutta was married to the opposite party, Subhabrata Dutta on 23rd February 2008. The marriage between them was duly consummated. Out of her wedlock with the opposite party, she gave birth to a female child on 23rd February 2014. After she gave birth to a female child, the opposite party subjected her to cruelty by various ways. Ultimately she was driven out of her matrimonial home on 20th March 2020. Getting no other alternative, she took shelter at her parental home at Village – Bantika, Blinchi Roy Para, P.O. – Boinchi, P.S. Pandua, District – Hooghly.

The petitioner submits that on the allegations of torture on her, she filed a complaint case under Section 156(3) of the Code of Criminal Procedure in the Court of the learned Chief Judicial Magistrate at Chinsurah and by

virtue of the order passed by the learned Chief Judicial Magistrate the complaint filed by her was registered as Pandua Police Station Case No. 282 of 2020, corresponding to G.R. No. 1408 of 2020. Besides, to sustain her livelihood, she has brought a maintenance case, being M.C. Case No. 181 of 2020 under Section 125 of the Code of Criminal Procedure, against the opposite party seeking maintenance allowance. The criminal case and the maintenance case brought by her are pending in the Court of the learned Chief Judicial Magistrate at Chinsurah, Hooghly. The petitioner submits that her parents are aged and ailing persons.

The petitioner came to know that the opposite party brought a matrimonial suit, being No. 145 of 2021 against her in the Court of the learned Additional District Judge at Kalna, District – Purba Bardhaman, seeking dissolution of marriage.

The petitioner states that it will take 4/5 hours time to attend the Court at Kalna from her parental home. Under such circumstances, the petitioner prays for transfer of the matrimonial suit as well as the Act-VIII case from the Court of the learned Additional District Judge at Kalna to the Court of the learned District Judge, Hooghly.

What I find from the averments as made in the revisional applications and the materials on record, the petitioner under compelling circumstances had to leave her matrimonial home and started residing at her parental home at aforesaid address. Her minor female child is staying with her. The uncontroverted averments in the revisional applications show that the parents of the petitioner are aged ailing persons. As it appears, a criminal case launched by

the petitioner on the allegations of torture and a maintenance case under Section 125 of the Cr.P.C. are pending in the Court of the learned Chief Judicial Magistrate at Chinsurah. That being the position, the opposite party has to appear before the concerned Courts at Chinsurah to participate in the hearing of the aforesaid two cases.

It is trite to say in view of *Kaberi Roy (Bhattacharya) @ Kaberi Bhattacharya (Supra)* this case and the Act-VIII case should be brought before the Court under whose jurisdiction the child of the concerned person ordinarily resides with the concerned person. Factually, the child of the petitioner is now staying with her at her parental home.

Having heard the learned Lawyer appearing for the parties and considering all aspects of the matter I think that it will be wise to withdraw the aforesaid matrimonial suit as also the Act-VIII case from the Court of the learned Additional District Judge at Kalna, Purba Bardhaman and transfer the suit and the Act-VIII case to the Court of the learned District Judge, Hooghly at Chinsurah.

In view of the above, the revisional applications are allowed.

Let the Matrimonial Suit, being No. 145 of 2021 as also Act-VIII case be withdrawn from the Court of the learned Additional District Judge at Kalna, Purba Bardhaman and the suit and the Act-VIII case be transferred to the Court of the learned District Judge, Hooghly at Chinsurah for disposal.

The learned Additional District Judge at Kalna,

Purba Bardhaman is directed to transmit the case record of the matrimonial suit and the Act-VII case to the transferee Court immediately after receipt of a copy of the order.

Learned District Judge, Hooghly at Chinsurah, may dispose of the suit and the Act-VII case either himself/herself or transfer the suit and the case to any of the competent Courts at the station for disposal.

With the aforesaid direction, C.O. 438 of 2022 and C.O. 510 of 2022 stand disposed of.

There will, however, be no order as to costs.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis upon compliance of all formalities.

(Rabindranath Samanta, J.)