

20.06.2022

ss

C.O. 668 of 2022

Smt. Dipanwita Banerjee

Vs.

Shri Sumanta Banerjee

Mr. Abhra Mukherjee

Mr. Sauradeep Dutta

... For the petitioner

Mr. Amal Kumar Banerjee

... For the opposite party

This revision arose 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 District Judge, Paschim Bardhaman at Asansol to the court of the learned District Judge, Purulia.

It is stated by the petitioner, Smt. Dipanwita Banerjee, that her marriage with the opposite party, Shri Sumanta Banerjee, was solemnised on 14th May, 2011 according to Hindu Rites and Customs and their marriage was registered under the Hindu Marriage Act on the same date, that is, on 14th May, 2011 at Purulia. The marriage between them was duly consummated and out of her wedlock with the opposite party she gave birth to a female child on 18th April, 2012.

It is alleged by the petitioner that she was ill-treated by the opposite party which caused serious mental depression and frustration of her.

The petitioner states that after a flat was purchased at Purulia, she started residing there with her husband

and minor child. But, she complains that she was subjected to mental and physical torture by the opposite party there.

The petitioner states that she is now residing at her paternal home at Purulia.

The petitioner came to know that the opposite party filed a matrimonial suit being No.127 of 2022 in the court of the learned District Judge, Paschim Bardhaman at Asansol against her for judicial separation.

The petitioner submits that the father of the petitioner who is aged about 73 years had undergone angioplasty on 15th February, 2022 and his movement is now restricted. Her mother who is aged about 70 years is suffering from age-related ailment. Her mother has only one kidney as the other one was operated. Her movement too is also restricted.

The petitioner also submits that the distance between Purulia and the court of learned District Judge, Paschim Badhaman at Asansol is about 86 K.Ms.

Owing to the long distance as above and her parents suffering from serious ailments, it will be hardship for her to attend the proceeding of the matrimonial suit before the court of the learned District Judge at Asansol.

Under the aforesaid circumstances, the petitioner seeks for transfer of the matrimonial suit.

The opposite party in his affidavit-in-opposition

denies the allegations as levelled against him by the petitioner.

The opposite party submits that this revisional application brought by the petitioner is liable to be dismissed.

Learned Counsel appearing for the petitioner submits that admittedly the marriage between the parties was solemnised at Purulia and the petitioner who is the respondent of the matrimonial suit now resides at Purulia. He submits that in the affidavit-in-opposition the opposite party has admitted that the petitioner and himself lastly resided at Purulia. In such context, learned Counsel for the petitioner by referring to Section 19 of the Hindu Marriage Act submits that a competent court in which the opposite party ought to have filed the matrimonial suit is the District Judge at Purulia. Learned Counsel by referring a decision rendered by the coordinate Bench in C.O. No.3963 of 2018 with C.O. 3964 of 2018 (Sanchayita Deb (Guha) Vs. Susanta Deb) submits that the coordinate Bench by placing reliance on plethora of judgements of the Hon'ble Apex Court has held that the inconvenience of the wife should be treated as prime consideration at the time of disposing of an application under Section 24 of the Code of Civil Procedure.

Per contra, learned Counsel appearing for the

opposite party by referring to a decision rendered in C.O. 622 of 2019 with C.O. 1094 of 2019 (Dipika Agarwal @ Dipika Khaitan Vs. Rishi Agarwal) submits that inconvenience of the wife should be considered in view of the attending circumstances as brought before the Court. Learned Counsel further submits that the facts and circumstances as put forward by the petitioner do not justify that she will face immense inconvenience to attend the matrimonial proceeding before the learned District Judge, Asansol. He also submits that if the Court directs the petitioner to attend the matrimonial proceeding before the court at Asansol, his client will bear all her travelling expenses.

But, what I find from the pleadings of the parties, it is an admitted fact that the marriage between the petitioner and the opposite party was solemnised and registered on 14th May, 2011 at Purulia. It is not in dispute that the petitioner now resides at Purulia. The opposite party in his affidavit-in-opposition has admitted that he lastly resided with the petitioner at Purulia.

Section 19 of the Hindu Marriage Act, 1955 enjoins as under :

“Every petition under this Act shall be presented to the District Court within the local 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 resided together”.

As Section 19 of the Hindu Marriage Act provides, the competent Court where the matrimonial suit ought to have been filed is the District Judge, Purulia.

Now let us turn to the other point as urged on behalf of the petitioner. The father of the petitioner is aged about 73 years and he has undergone angioplasty on 15th February, 2022 and her mother aged about 70 years is suffering from various ailments having one kidney only. The child of the petitioner is a minor girl. Such circumstances indicate that the petitioner faces inconvenience to travel the aforesaid long distance to go to the court of the learned District Judge, Paschim Bardhaman at Asansol from her present residence at Purulia.

A reading of the judgement passed by a coordinate Bench in the case of Sanchayita Deb (Guha) Vs. Susanta Deb in C.O. 3963 of 2018 with C.O.3964 of 2018 shows that the learned Single Judge by referring to a catena of decisions of the Hon’ble Apex Court held that the inconvenience of the wife should be treated as the paramount consideration in a proceeding under Section 24 of the Code of Civil Procedure.

Having heard the learned Counsel appearing for the parties and considering the facts and circumstances as

narrated above, I am of the view that the revisional application should be allowed.

Accordingly, the revisional application being C.O. 668 of 2022 is allowed on contest.

Let the matrimonial suit being No.127 of 2022 be withdrawn from the court of the learned District Judge, Paschim Bardhaman at Asansol and the suit be transferred to the court of the learned District Judge at Purulia for disposal.

The learned District Judge, Purulia may dispose of the suit either himself or herself or transfer the suit to any of the courts of the learned Additional District Judge at Purulia for disposal.

The learned District Judge, Paschim Bardhaman is directed to transmit the case record of the matrimonial suit to the court of the learned District Judge, Purulia immediately after receipt copy of the letter.

Let the copy of the order be communicated to both the courts below immediately.

There shall be no order as to costs.

(Rabindranath Samanta, J.)

