

08.06.2022  
Sl. No.34  
KS

**C.O. 721 of 2022**

**Smt. Barnali Biswas @ Ganai**  
**-Vs.-**  
**Tapas Biswas**

Mr. Uday Sankar Chattopadhyay  
.....For the Petitioner

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

It appears from the affidavit of service that notice has been served upon the opposite party by Speed Post with acknowledgement due as well as through the learned advocate who represents him before the learned Court below.

Despite service of notice there is no representation on behalf of the opposite party.

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 a Court at Barrackpore to the Court of the Learned District Judge, Purba Bardhaman.

To put succinctly, it is stated by the petitioner, Smt. Barnali Biswas @ Ganai that her marriage with the opposite party, Tapas Biswas was registered on 27<sup>th</sup> September, 2007 and their

social marriage was solemnized on 26<sup>th</sup> November, 2007. They lived together as husband and wife and their marriage was consummated. Out of her wedlock with the opposite party she gave birth to a female child named Trinisha Biswas on 3<sup>rd</sup> November, 2008.

Sometime after her marriage and after she gave birth to the child the opposite party inflicted torture upon her both physically and mentally. She was driven out of her matrimonial home in the year 2018. Under such circumstances, she had to take shelter at her parental home and now she is residing there.

Because of the torture meted out to her, the petitioner filed a complaint in the Court of the learned Chief Judicial Magistrate, Purba Bardhaman under Section 156(3) of the Code of Criminal Procedure and the complaint was registered as a F.I.R. under Section 498A/ 406/ 34 of the Indian Penal Code. For sustenance of the livelihood of her daughter and herself, the petitioner filed a maintenance case under Section 125 of the Code of Criminal Procedure in the Court of the learned Chief Judicial Magistrate, Purba Bardhaman at Burdwan and the case was transferred to the Court of the learned Judicial Magistrate, 5<sup>th</sup> Court, Purba Bardhaman.

After receiving summons, the petitioner came to know that the opposite party has filed a Matrimonial Suit being No.2049 of

2019 in the Court of the learned Additional District Judge, Barrackpore under Section 27 of the Special Marriage Act, 1954 seeking dissolution of their marriage. The distance between the place where the petitioner now resides and the Court at Barrackpore is nearly 85 kilometer. The father of the petitioner is an aged person. The petitioner has no income of her own and she depends upon her father. The child of the petitioner is a school going girl.

Under such circumstances, it will be very hardship for the petitioner to travel 85 kilometer to attend the matrimonial proceeding before the Court at Barrackpore. As such, the petitioner prays that the aforesaid matrimonial suit be transferred to the Court of the learned District Judge, Burdwan for disposal.

Learned counsel appearing for the petitioner submits that despite service of notice by all the available modes, the opposite party has not preferred to contest the instant proceeding. Learned counsel submits that the circumstances as narrated above by the petitioner justify that it will be hardship for her to travel a long distance to attend the matrimonial proceeding before the Court at Barrackpore. As such, learned lawyer submits that the matrimonial suit may be transferred.

In the absence of the opposite party despite service of notice upon him, the facts and circumstances as narrated above by the petitioner in the application shall be treated to have been uncontroverted.

As I find from the documents annexed to the application, a criminal proceeding under Section 498/406/34 of the Indian Penal Code is pending before the concerned Court of the learned Magistrate at Burdwan, Purba Bardhaman and the maintenance case under Section 125 of the Code of Criminal Procedure filed by the petitioner is also pending there. So the opposite party has to attend the concerned Courts at Burdwan, Purba Bardhaman to contest the aforesaid proceedings.

The circumstances as narrated in the application do justify that it will be hardship for the petitioner to travel a long distance without any assistance of his ailing father to attend the matrimonial proceeding before the Court at Barrackpore.

Having heard the learned counsel appearing for the petitioner and considering the totality of the facts and circumstances of the case as narrated in the application supported by affidavit, I feel that it will be just if the aforesaid matrimonial suit is withdrawn and transferred to the concerned Court at Burdwan, Purba Bardhaman.

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

Accordingly, let the Matrimonial Suit No.2049 of 2019 now pending in the Court of the Learned Additional District Judge, F.T.C. - III, Barrackpore, North 24 Parganas be withdrawn and the suit be transferred to the court of the Learned District Judge, Burdwan at Purba Bardhaman for disposal.

The learned District Judge, Burdwan at Purba Bardhaman may hear and dispose of the suit either by himself or transfer the suit to any other Court of the learned Additional District Judge at the station.

The Learned Additional District Judge, F.T.C. – III, Barrackpore is directed to transmit the case records of the matrimonial suit to the learned transferee Court forthwith after receipt of the copy of this order.

Let a copy of this order be communicated to both the Learned Courts below.

The revisional application stands disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**(Rabindranath Samanta, J.)**