

28-07-2022
Item no.78
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.580 of 2021
Smt. Saroj Shaw
-vs-
Sri Ritesh Kumar Shaw

Ms. Suman Sehanabis ...for the petitioner

Mr. Bellal Sk.
Mr. A.K. Singh
Mr. Protim Chakraborty ...for the opposite party

Learned counsel for the opposite party submits that though the opposite party has not filed any affidavit-in-opposition, the allegations and averments as made in the revisional application shall be deemed to have been denied by the opposite party.

The petitioner in this application under section 24 of the Code of Civil Procedure, 1908 seeks transfer of a matrimonial suit under section 9 of the Hindu Marriage Act, 1955 filed by the opposite party-husband from the court of learned Additional District Judge, Sealdah to the court of learned District Judge Cooch Behar.

It is stated by the petitioner that her marriage with the opposite party was solemnized on July 10, 2005 according to Hindu rites and customs. The marriage between them was consummated; and out of their wedlock, a female child and a male child were born on April 21, 2006 and January 30, 2011 respectively.

It is alleged by the petitioner that after her marriage, the opposite party subjected her to cruelty by various ways. Unable to bear with the torture meted out to her, she left her matrimonial home and started residing at her parental home at R.N. Road, Cooch Behar Town, P.S. Kotwali in the

district Cooch Behar .

To sustain livelihood of her and herself, she filed a maintenance case being Misc. Case No.168 of 2019 in the court of learned Chief Judicial Magistrate, Cooch Behar. The parents of her are aged and ailing persons.

The petitioner states that she came to know that the opposite party brought a matrimonial suit being No.41 of 2020 against her seeking restitution of conjugal rights which is now pending in the court of learned Additional District Judge, 2nd Court at Sealdah.

The petitioner states that the distance between her parental home and the concerned court at Sealdah is about 700 kms. Her children are minor. Her parents are aged and ailing persons. Hence it will be hardship for her by travelling such a long distance to appear before the court at Sealdah to attend the matrimonial proceeding. Hence this prayer.

On the other hand, it is submitted on behalf of the opposite party that the parents of the opposite party are aged and ailing persons and they reside at Kashipur, Kolkata. The opposite party is to look after his aged and ailing parents. It will be difficult for him to go to Cooch Behar leaving his aged and ailing parents at their house. Under such circumstances, learned counsel submits that the instant revisional application is liable to be dismissed.

In a number of decisions, the Hon'ble apex court as well as this court have held that inconvenience of the wife should be a paramount consideration while disposing of an application under section 24 CPC.

Having heard learned counsels for the parties and considering the balance of convenience and inconvenience of the parties, I feel that it would be wise if the matrimonial

suit is withdrawn from the court at Sealdah and transferred to the concerned court at Cooch Behar.

In view of the above, the revisional application is allowed by the following order.

Let Matrimonial Suit No.41 of 2020 be withdrawn from the court of learned Additional District Judge, 2nd Court at Sealdah and the suit be transferred to the court of learned District Judge, Cooch Behar for disposal.

Learned District Judge, Cooch Behar may either dispose of the suit himself/herself or transfer it to any of the courts of learned Additional District Judge at the station.

Learned Additional District Judge, 2nd Court at Sealdah is directed to transmit the case record of Matrimonial Suit No.41 of 2020 to the transferee court immediately after receipt of a copy of this order.

The department is directed to communicate a copy of this order to both the learned courts below forthwith.

With the above, CO No.580 of 2021 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]

