

16-08-2022
Item no.78
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.818 of 2022
Smt. Manisha Karki (Sharma) alias Manisha Karki
-vs-
Sri Vijay Kumar Sharma

Mr. Indranuj Dutta
Mr. Bikram Basak
Mr. Rahul Ghoshal ...for the petitioner

Ms. Susmita Saha Dutta
Mr. Niladri Saha ...for the opposite party

The petitioner in this revisional application under section 24 of the Code of Civil Procedure, 1908 seeks transfer of a matrimonial suit filed by the opposite party-husband from the court of learned Additional District Judge, 3rd Court, Barrackpore, North 24 Parganas to the court of learned Principal Judge, Family Court, Bankshall Court, Calcutta.

Learned counsel for the petitioner submits that under some compelling circumstances the petitioner is now residing at her parental home. He points out that after she took shelter at her parental home, she filed one application under the Protection of Women from Domestic Violence Act in the court of learned Chief Metropolitan Magistrate, Calcutta and the case is now pending in the court of learned Metropolitan Magistrate, 15th Court, Calcutta. Besides, she has brought one maintenance case under section 125 CrPC against the opposite party and this proceeding is pending in the court of learned Principal Judge, Family Court, Calcutta. Moreover, one criminal case launched by her client under sections 498A/406/34 IPC which is pending in the court of learned Metropolitan Magistrate, 9th Court, Calcutta.

Learned counsel for the petitioner further submits that the distance between the place of residence of the opposite party and the Family Court at Calcutta is 13.2 kms. whereas the distance between the residence of the petitioner and the court at Barrackpore is about 22.5 kms. Demonstrating such circumstances learned counsel submits the petitioner has made out a good case to get the matrimonial suit transferred from the court at Barrackpore to the Family Court at Calcutta.

Per contra, learned counsel appearing for the opposite party by citing a decision in the case of **Anindita Das v. Srijit Das** reported in **(2006) 9 SCC 197** submits that the Hon'ble Supreme Court has held in the case that leniency shown to ladies by court in transfer matters is often misused and taken advantage of by women and as such the court now requires to consider each petition on its own merits. Learned counsel points out that the petitioner is a working lady whose office is at Salt Lake, Kolkata. Therefore, to attend her office she has to keep her child with the custody of someone at her parental home. Under such factual scenario, learned counsel submits that the revisional application is liable to be dismissed.

Shorn of details the case of the petitioner may be stated as under.

The petitioner, Smt. Manisha Karki (Sharma) alias Manisha Karki, was married to the opposite party on September 22, 2017 according to Hindu rites and customs. The marriage between them was consummated; and out of their wedlock, a female child was born on June 30, 2018.

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 No.44/B, Rafi Ahmed Kidwai Road, Park Street, Kolkata-16. She complains that on the allegations of torture and perpetrating violence upon her, she lodged an FIR at the Park Street police station and filed an application under provisions of the Protection of Women from Domestic Violence Act. The FIR has been registered as Park Street PS Case No.224 of 2019 dated November 14, 2019 under sections 498A/406/34 IPC and it is pending in the court of learned Metropolitan Magistrate, 9th Court, Calcutta. The application under provisions of the Domestic Violence Act brought by her has been registered as Misc. Case No.3 of 2019 and this case is pending in the court of learned Metropolitan Magistrate, 15th Court, Calcutta.

To sustain livelihood of herself and her child, she has filed a maintenance case being Misc. Case No.58 of 2019 in the court of learned Principal Judge, Family Court at Calcutta.

The petitioner submits that she came to know that the opposite party brought a matrimonial suit being No.233 of 2019 against her seeking dissolution of marriage which is now pending in the court of learned Additional District Judge, 3rd Court at Barrackpore.

The petitioner states that it will be hardship for her to appear before the court at Barrackpore to attend the matrimonial proceeding, rather it will be convenient for her to appear before the court of learned Principal Judge, Family Court at Calcutta.

As I find from the averments made in the revisional application and the materials on record, the petitioner is now residing at her parental home at the aforesaid address with her minor female child. The petitioner while staying at her parental home she brought the s.125 CrPC proceeding

against the opposite party which is now pending in the court of learned Principal Judge, Family Court, Calcutta. Besides, the proceeding under the provisions of the Protection of Women from Domestic Violence Act brought by her is pending in the court of learned Metropolitan Magistrate, 15th Court, Calcutta. The criminal case launched by her under ss. 498A/406/34 IPC read with ss.3/4 Dowry Provisions Act is pending in the court of learned Metropolitan Magistrate, 9th Court, Calcutta. It goes without saying that the opposite party has to appear before the above-stated courts to take part in the hearing of the cases.

Learned counsel for the petitioner relying on a decision in the case of **Rajani Kishsor Pardeshi v. Kishor Babulal Pardeshi** reported in **(2005) 12 SCC 237** submits that the Hon'ble Supreme Court has held that the convenience of the wife is to be preferred over the convenience of the husband while disposing of a s.24 CPC application.

However, in the decision in the case of **Anindita Das v. Srijit Dasm (supra)**, the Hon'ble Supreme Court has observed that the leniency shown by the court to the women while disposing of transfer matters is often misused and taken advantage of by women. In such conspectus of the circumstances, the Supreme Court has sermonized the courts that courts require to consider each petition on its own merits.

Having heard learned counsels for the parties and considering the factum that the cases as above are pending in the Metropolitan Magistrates' courts at Calcutta where the opposite party has to appear to contest the cases, I feel that it would be wise if the matrimonial suit is withdrawn from the court at Barrackpore and transferred to the

Principal Judge, Family Court, Calcutta.

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

Let Matrimonial Suit No.233 of 2019 be withdrawn from the court of learned Additional District Judge, 3rd Court at Barrackpore and the suit be transferred to the court of learned Principal Judge, Family Court, Bankshall Court, Calcutta for disposal.

Learned Additional District Judge, 3rd Court at Barrackpore is directed to transmit the case record of Matrimonial Suit No.233 of 2019 to the learned 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.818 of 2022 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]

