

18th August, 2022
(D/L No.115 & 116)
Ct.No.14
(SKB)

C.O.1090 of 2020

Debtanu Nayek
Versus
Reetika Bose

With

C.O.610 of 2021

Reetika Bose
Versus
Debtanu Nayek

Mr. Anirban Bose,
Mr. Satyajeet Sengupta
... for the opposite party
in C.O.1090 of 2020
and
for the petitioner
in C.O.610 of 2021.

Re: C.O.1090 of 2020

On call none appears for the petitioner in connection with the revisional application being C.O.1090 of 2020.

I have heard learned lawyer appearing for the opposite party.

Learned lawyer appearing for the opposite party submits that the matter was referred to the learned Mediator, but the petitioner chose not to proceed with the mediation proceedings.

I feel that the petitioner is not interested to proceed with this revisional application.

Accordingly, the revisional application being C.O.1090 of 2020 is dismissed for non-appearance of the petitioner.

Re: C.O.610 of 2021

Now the revisional application being C.O.610 of 2021 is taken up for hearing.

I have heard learned lawyer appearing for the petitioner.

None appears for the opposite party.

This revisional application has been filed by the petitioner seeking transfer of the matrimonial suit from the court of the learned Additional District Judge, 2nd Court, Uluberia, Howrah, to the learned Additional District Judge, 3rd Court, Howrah. The petitioner Reetika Bose states that her marriage with the opposite party Debtanu Nayek was registered under provisions of the Special Marriage Act, 1954. But the marriage between them was never consummated due to practicing fraud upon her by the opposite party. On such ground, she filed the Matrimonial Suit being No.1157 of 2018 under Section 25 of the Special Marriage Act against the opposite party in the court of learned District Judge, Howrah seeking decree of nullity of marriage. Now the suit is pending in the court of the learned 3rd Additional District Judge, Howrah.

Despite service of summons upon the opposite party, the opposite party did not contest the matrimonial suit and, as such, the suit was decreed *ex parte* against him. However, on an application under Order IX Rule 13 of the Code of Civil Procedure filed by him, the *ex parte* decree passed in the matrimonial suit was set aside and the suit was restored to its initial position. The petitioner states that the opposite party by filing written statement is contesting the suit.

The petitioner came to know that the opposite party has filed a Matrimonial Suit being No.346 of 2018 under Section 22 of the Special Marriage Act seeking restitution of conjugal rights against her in the court of the learned Additional District Judge, 1st Court, Uluberia, Howrah. Subsequently, the suit was transferred to the court of the learned Additional District Judge, 2nd Court, Uluberia, Howrah.

The petitioner avers that she has been residing at the address at Village-Sankrail, P.S.-Sankrail, Howrah, for the last four years due to her official job. Now she is pursuing her education at George College, Howrah, which is approximately 30 minutes away from her residence. She is regularly in touch with her friends and takes tuition within the area of her college and residence. She regularly visits the lectures and professor of the college associated with the college near

her residence. She states that she is not getting any alimony and/or maintenance from the opposite party. Under such circumstance, it would be difficult for her to appear before the court at Uluberia, Howrah to participate in the matrimonial proceeding brought by the opposite party. The petitioner submits that the opposite party is a politically influenced person and if the matrimonial suit proceeds before the learned court at Uluberia, she may not get fair treatment to proceed with the matrimonial suit. Under such circumstances, the petitioner seeks transfer of the aforesaid matrimonial suit.

Though the opposite party entered appearance in connection with the instant revisional application, he has chosen not to file any affidavit-in-opposition to controvert the averments made in the application. Therefore, the averments/allegations as made in the revisional application by the petitioner remain uncontroverted.

As the uncontroverted averments of the revisional application suggests, the opposite party has already filed written statement to contest the matrimonial suit brought by the petitioner against him under Section 25 of the Special Marriage Act, I do not find any reason to disbelieve the grounds of inconvenience as narrated by the petitioner in her application.

Learned lawyer appearing for the petitioner by referring to Section 31 of the Special Marriage Act submits that matrimonial suit should be brought in the court under whose jurisdiction the wife/petitioner resides. Learned lawyer points out that the opposite party has the opportunity to make counter-claim in the suit already brought against him.

In a plethora of decisions the Hon'ble Apex Court has held that inconvenience of the wife should be a permanent consideration while disposing of the application under Section 24 of the Code of Civil Procedure.

Having heard learned lawyer of the petitioner and considering the facts and circumstances as quoted above I think that it would be wise to withdraw the aforesaid matrimonial suit from the court of the learned Additional District Judge, 2nd Court, Uluberia, Howrah and transfer the said suit to the court of the learned Additional District Judge, 3rd Court, Howrah.

Therefore, the revisional application being C.O.610 of 2021 is allowed. Let the matrimonial suit being No.346 of 2018 be withdrawn from the court of the learned Additional District Judge, 2nd Court, Uluberia and the suit be transferred to the court of the learned Additional District Judge, 3rd Court, Howrah for disposal.

The learned Additional District Judge, 2nd Court Uluberia is directed to transmit the matrimonial suit being No.346 of 2018 to the learned transferee court immediately after receiving the copy of this order.

Let a copy of this order be communicated to the learned courts below immediately.

No order as to costs.

The transferee court is requested to make endeavour so that the matrimonial suit be disposed of as expeditiously as possible.

Certified copy of this order, if applied for, shall be given to the parties.

(Rabindranath Samanta, J.)