

18-08-2022
Item no.121
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO No.818 of 2021
Smt. Jyotirupa Banerjee
-VS-
Sri Amit Banerjee

Mr. Sourav Sengupta ...for the petitioner

Affidavit of service filed in court be taken on record.

It appears from the affidavit of service that notice has duly been served upon the opposite party as well as learned counsel who represents the opposite party before the learned court below. Despite notice, there is no representation on behalf of him. Hence the revisional application is taken up for hearing in absence of the opposite party.

The petitioner in this revisional application under section 24 of the Code of Civil Procedure, 1908 is seeking transfer of a matrimonial suit filed by the opposite party from the court of learned Additional District Judge, 3rd Court at Alipore to the learned District Judge, Purba Bardhaman.

To put succinctly, the petitioner states that her marriage with the opposite party was solemnized on August 13, 2012 according to the Special Marriage Act, 1954. The marriage between them was duly consummated; and out of their wedlock, a male child was born on August 8, 2013.

The petitioner complains that the opposite party with his family members subjected her to cruelty, both physically and mentally. Unable to bear with the torture meted out to her, she had to leave her matrimonial home and started residing at her parental home at village

Amarun, P.O. Bhatar, district Purba Bardhaman.

On the allegations of torture upon her, the petitioner filed a complaint under section 156(3) CrPC in the court of learned CJM, Purba Bardhaman for registering a case under sections 498A/406/307/34 IPC. Besides, in order to sustain her minor child and herself, she has brought a maintenance case being Misc. Case No.126 of 2021 under section 125 CrPC against the opposite party in the court of learned Judicial Magistrate, 6th Court, at Purba Bardhaman.

The petitioner came to know that the opposite party brought a matrimonial suit being No.1316 of 2020 against her seeking dissolution of their marriage and the case is pending in the court of learned Additional District Judge, 3rd Court at Alipore.

The petitioner states that the distance between her parental home and the concerned court at Alipore is about 140 kms. She has no source of income. Under such circumstances, it will be hardship for her to appear before the concerned court at Alipore to attend the matrimonial proceeding. Hence this prayer.

Since the opposite party has chosen not to contest the revisional application, it will be presumed that the averments/allegations made in the revisional application remain uncontroverted.

What I find from the uncontroverted averments in the s.24 CPC application and the materials on record, the petitioner under some compelling circumstances had to leave her matrimonial home and started residing at her parental home at Purba Bardhaman. It appears that the petitioner brought a complaint under section 156(3) CrPC in the court of learned CJM, Purba Bardhaman for

registering a case under sections 498A/406/307/34 IPC. Besides, she has brought a maintenance case being Misc. Case No.126 of 2021 under section 125 CrPC against the opposite party and the case is pending in the court of learned Judicial Magistrate, 6th Court, at Purba Bardhaman. These show that the opposite party will have to appear before the court or courts at Purba Bardhaman to attend the aforesaid proceedings. The distance between the petitioner's parental house and the concerned court at Alipore is about 140 kms. All these demonstrate if the petitioner is to appear before the court at Alipore, she will face immense hardship.

Having heard learned counsel for the petitioner and considering the facts and circumstances as above, I feel that it would be wise to withdraw the matrimonial suit from the concerned court at Alipore and the suit be transferred to the court of learned District Judge, Purba Bardhaman.

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

Let the matrimonial suit being No.1316 of 2020 be withdrawn from the court of learned Additional District Judge, 3rd Court at Alipore and the suit be transferred to the court of learned District Judge, Purba Bardhaman for disposal.

The learned District Judge, Purba Bardhaman may either dispose of the said suit himself/herself or transfer it to any of the courts of learned Additional district Judge at Burdwan for disposal.

The learned Additional District Judge, 3rd Court, Alipore is directed to transmit the case record of the aforementioned matrimonial suit 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 2021 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]