

18-08-2022
Item no.127
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.1028 of 2022
Smt. Sheelata Bandyopadhyay
-VS-
Sri Sujoy Sankar Bandyopadhyay

Mr. Dyutiman Banerjee ...for the petitioner

Affidavit of service filed in court be taken on record.

Despite service of notice, there is no representation on behalf of the opposite party. 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 District Judge, Murshidabad to the court of learned Additional District Judge, Bolpur, Birbhum.

To put succinctly, the petitioner states that her marriage with the opposite party was solemnized on December 11, 2009 according to Hindu rites and customs. The marriage between them was duly consummated; and out of their wedlock, a male child was born on March 9, 2011.

The petitioner alleges that some time after their marriage, the opposite party with his family members inflicted torture upon her by various ways. 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 Trigulpatty, Sabujpally, P.O. Bolpur, district Birbhum.

On the allegations of torture upon her, the petitioner filed a complaint against the opposite party in the court of learned ACJM, Bolpur. By virtue of an order of the learned ACJM, the complaint filed by her was registered as Bolpur P.S. Case No.262/2020 dated October 13, 2020 under section 498A IPC and under ss.3/4 Dowry Prohibition Act and this case is pending in the court of learned ACJM, Bolpur. Besides, in order to sustain her minor child and her livelihood, she has brought a maintenance case being Misc. Case No.113 of 2020 under section 125 CrPC against the opposite party and the case is pending in the court of learned Additional Chief Judicial Magistrate, Bolpur.

The petitioner came to know that the opposite party brought a matrimonial suit being No.369 of 2020 against her seeking restitution of conjugal rights in the court of learned District Judge, Murshidabad.

The petitioner states that the distance between her parental home and the concerned court at Murshidabad is about 110 kms. She has no source of income. Under such circumstances, it will be hardship for her to appear before the concerned court at Murshidabad 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 supported by affidavits, the petitioner under some compelling circumstances had to leave her matrimonial home and started residing at her parental home at Bolpur, Birbhum. As I find, the petitioner

launched a case under section 498A IPC and under ss.3/4 Dowry Prohibition Act which is pending in the court of learned ACJM, Bolpur. Besides, in order to sustain her and her minor child's livelihood, she has brought a maintenance case being Misc. Case No.113 of 2020 under section 125 CrPC against the opposite party and the case is pending in the court of learned Additional Chief Judicial Magistrate, Bolpur. These show that the opposite party will have to appear before the court or courts at Bolpur to attend the aforesaid proceedings. The distance between the petitioner's parental home and the concerned court at Murshidabad is about 110 kms. Moreover, the petitioner has no source of income. All these demonstrate if the petitioner is to appear before the court at Murshidabad, 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 Murshidabad and the suit be transferred to the court of learned Additional District Judge, Bolpur, Birbhum.

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

Let the matrimonial suit being No.369 of 2020 be withdrawn from the court of learned District Judge, Murshidabad and the suit be transferred to the court of learned Additional District Judge, Bolpur, Birbhum for disposal.

The learned District Judge, Murshidabad 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.1028 of 2022 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]