

Ct. 22.7
No. 2022
14 Item
No.2

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 1173 of 2022

With
CAN 1 of 2022
and
CAN 2 of 2022
Amrita Dutta
-Versus-
Amitava Dutta

Mr. Tilak Bose
Mr. Asit Dey
Ms. Shormi Dutta **...For the Petitioner**

Mr. Atis Kumar Biswas
Mr.Amit Singh
Ms. Renu Mondal
Mr. Jyoti Agarwal **...For the Opposite Party**

This revisional application under Section 24 of the Code of Civil Procedure has been filed seeking transfer of a matrimonial suit from the Court of the learned Additional District Judge, 2nd Court, Serampore, Hooghly to the Court of learned District Judge, South 24 Parganas at Alipore.

To put succinctly, it is the case of the petitioner Smt. Amrita Dutta that her marriage with the opposite party Amitava Dutta was solemnized on 3rd May, 2015. Prior to her marriage, she used to stay at her parental home at 41/12, Goswami Para Lane, Bally, Howrah with her parents Soumitra Sankar Pal and Soumita Pal and brother Aritra Paul.

After her marriage she stayed at her matrimonial home for sometime at No. 7, Pan Para Bye Lane, Bhadrakali, Hooghly. Her matrimonial home is the ancestral house of her father-in-law.

The petitioner is an educated lady. She obtained master's degree in Geology from Calcutta University in the year 2012. As such, she is in full control of her mental faculties.

In the month of July, 2017 the marriage ceremony of her brother took place and she intended to attend the marriage ceremony. But, as her father asked her not to attend the marriage ceremony without any reason, she could not attend the marriage ceremony.

During Durga Puja in 2017 the petitioner along with her husband came to her matrimonial home and stayed there for about seven days. During her stay there she went to meet her parents and brother at her parental home but she was not allowed to enter their house. On the contrary, she was insulted with abusive languages.

During the period from 28th March, 2018 and 1st June, 2018 the petitioner again came back from Bengaluru for 3 / 4 times and stayed at her in-laws' house. But, at her matrimonial home she was beaten by a cousin of her husband. At the time, she stayed at her parental home for one or two day(s), but there her brother Aritra Paul physically assaulted her. At that point of time she developed some mental depression. Ultimately, with the help of a social worker she was firstly admitted to Mankundu Mental Hospital, Hooghly in June, 2018. Thereafter she was treated for some time at Pavlov Hospital, Calcutta till 7th July, 2018. After she got cured from mental depression she was taken to a home named "Paripurnata", 1912, Panchasayar, P.S. Panchasayar, South 24 Parganas, Kolkata – 700094. But, as this home does not permit any person to stay for a longer

period, the petitioner was taken to a home named Association for Social Health in India, 9, Ashoke Avenue, P.S Netaji Nagar, Kolkata – 700040.

The petitioner states that the opposite party has brought a matrimonial suit being No. 765 of 2018 against her before the Court of the learned Additional District Judge, 2nd Court, Serampore, Hooghly wherein she is allegedly represented by her father as her guardian and next friend. The petitioner alleges that she has brought a case being Complaint Case No. 5916 of 2019 under Section 12(1) of Protection of Women From Domestic Violation Act, 2005 against her husband and father and the case is pending in the Court of the learned Judicial Magistrate, 1st Court, Alipore. The petitioner asserts that she has recovered from mental illness and she is capable of contesting the matrimonial suit. Her father against whom a proceeding under Domestic Violation Act has been launched by her cannot be permitted to contest the suit on her behalf as her guardian. Hence, the prayer seeking transfer of the matrimonial suit.

The opposite party in his affidavit-in-opposition has denied the averments/allegations as made by the petitioners in the revisional application. The opposite party submits that the learned Additional District Judge, 2nd Court, Serampore, Hooghly after being satisfied with the mental illness of the petitioner has permitted her father to contest the suit on her behalf. On such grounds, the opposite party seeks dismissal of the revisional application.

Admittedly, the petitioner was married to the opposite party on 3rd May, 2015. It is not in dispute that the petitioner has completed her master's degree in Geology

from Calcutta University. Nothing on record indicates that prior to her marriage the petitioner was inflicted with mental disorder.

What I find, the petitioner after her marriage stayed at her matrimonial home at the aforesaid address and thereafter she stayed with her husband at his place of work at Bengaluru.

The petitioner alleges that she was subjected to torture both by her husband and his cousin and by his father and brother.

What I find from the materials on record, the petitioner after developing some mental depression/disorder was initially treated for some time at Mankundu Mental Hospital, Hooghly in June, 2018. Thereafter, she was shifted to Pavlov Hospital, Kolkata and she remained admitted there till 7th July, 2018. Thereafter, she was lodged at a home named Paripurnata at Panchasayar, Kolkata- 700094. As this home does not permit a person to stay for a longer period, the petitioner is now staying at a home named Association for Social Health in India, Kolkata – 700040.

Learned lawyer for the petitioner informs that this home is financially aided by the Government.

The petitioner in her application supported by affidavit affirmed by herself and affidavit-in-reply also affirmed by herself asserts that she has now got cured from all mental depression or disorder and she can effectively contest the matrimonial suit. It is her contention that as she has brought a proceeding against her father under the

Protection of Women from Domestic Violation Act, her defence in respect of the matrimonial suit cannot fairly be placed before the learned Court below.

Having heard learned counsels appearing for the parties and considering the totality of the facts and circumstances as demonstrated by the petitioner I think that the aforesaid matrimonial suit should be withdrawn from the Court of learned Additional District Judge, 2nd Court, Serampore, Hooghly and the suit be transferred to the Court of the learned District Judge, South 24 Parganas at Alipore.

Accordingly, it is ordered that the matrimonial suit being No. 765 of 2018 be withdrawn from the Court of the learned Additional District Judge, 2nd Court, Serampore, Hooghly and the suit be transferred to the Court of the learned District Judge, South 24 Parganas at Alipore for disposal.

The learned District Judge may dispose of the suit either himself or transfer the suit to any of the Courts of Additional District Judge at Alipore for disposal.

The transferee Court shall consider afresh whether the petitioner can contest the suit ably or not. If the learned Transferee Court finds that the petitioner has mental capacity or alertness to contest the suit, in that event the learned Court will pass necessary order.

The learned Additional District Judge, 2nd Court, Serampore, Hooghly is directed to transmit the case record of the matrimonial suit to the Court of learned District Judge, South 24 Parganas at Alipore immediately after

receipt of a copy of this order.

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

With the aforesaid direction the revisional application being CO No. 1173 of 2022 stands disposed of.

No order as to costs.

(Rabindranath Samanta,J.)