

02-08-2022
Item no.90
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.1108 of 2021
Smt. Payel Ghosh
-vs-
Sri Rupak Kumar Saha

Ms. Mousumi Bhawal
Mr. Aman Gupta
Mr. Johan Bhattacharya ...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, Fast Track 1st Court, Malda to the learned Additional District Judge, 1st Court, Siliguri, Darjeeling.

Learned lawyer for the petitioner submits that the circumstances as narrated by the petitioner in the s.24 CPC application will demonstrate that the petitioner will face immense hardship if she is to appear before the court at Malda to participate in the hearing of the matrimonial proceeding. As such, she submits that the matrimonial suit be transferred to the concerned court at Siliguri.

To put it succinctly, the petitioner states that her marriage with the opposite party was initially registered on

April 11, 2019 and thereafter their marriage between them was solemnized on April 29, 2019 according to Hindu rites and customs.

The petitioner complains that some time after their marriage, the opposite party with his family members subjected her to cruelty 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 428/1, Bhanu Bhakto Sarani, Ward No.3 of Gurung Nagar (Basti) P.O. & P.S. Pradhan Nagar, Siliguri, district Darjeeling.

On the allegations of torture inflicted upon her, the petitioner lodged an FIR at Siliguri Women police station which was registered as Siliguri Women P.S. Case No.161 of 2019 under sections 498A/506 IPC and under sections 3/4 of the Dowry Prohibition Act and this proceeding is pending in the court of learned Additional Chief Judicial Magistrate, Siliguri.

After getting summons, the petitioner came to know that the opposite party brought a matrimonial suit being No.395 of 2020 under section 9 of the Hindu Marriage Act, 1955 against her in the court of learned Additional District Judge, Fast Track 1st Court, Malda seeking restitution of conjugal rights.

The petitioner states that the distance between her parental home and the concerned court at Malda is about 240 kms. Under such circumstances, it will be hardship for her to appear before the concerned court at Malda 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 application remain

uncontroverted.

What I find from the uncontroverted averments in the section 24 CPC application, a criminal case under sections 498A/506, IPC and under sections 3/4, Dowry Prohibition Act brought by the petitioner against the opposite party is pending in the court of learned Additional Chief Judicial Magistrate, Siliguri. That being so, the opposite party will have to appear before the concerned court at Siliguri to attend the aforesaid proceedings. Besides, as submitted by learned counsel for the petitioner, if the petitioner is to appear before the court at Malda travelling a long distance, she will face immense hardship.

In a catena of decisions, the Hon'ble Supreme Court and this court have held that inconvenience of the wife should be of paramount consideration while disposing of an application under section 24 of the Code.

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

Let the matrimonial suit being No.395 of 2020 be withdrawn from the court of learned Additional District Judge, Fast Track 1st Court, Malda and the suit be transferred to the court of learned Additional District Judge, 1st Court at Siliguri, Darjeeling for disposal.

The learned Additional District Judge, 1st Court at Siliguri, Darjeeling may either dispose of the suit himself/herself or transfer it to any of the competent courts at Siliguri for disposal.

The learned Additional District Judge, Fast Track 1st Court, Malda is directed to transmit the case record of the aforementioned matrimonial suit to the 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.1108 of 2021 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]