

30.08.2022

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C.O. 1282 of 2022

Shyamali Das

Vs.

Kanchan Kumar Das

Mr. Robiul Islam

Mr. Raju Mondal

Ms. Pramita Banerjee

Mr. S. A. Munshi

Ms. Firoja Khatoon

... For the petitioner

None appears for the opposite party. Despite opportunity was given to him, the opposite party has not filed any affidavit-in-opposition to the revisional application.

Accordingly, the revisional application is taken up for hearing in the absence of the opposite party.

By filing this revisional application, the petitioner has sought for transfer of a Matrimonial Suit from the court of the learned Additional District Judge, Fast Track Court-I, Kandi, Murshidabad to the court of the learned District Judge, Murshidabad at Berhampore.

The petitioner states that she was married to the opposite party on 26th November, 2007 and the marriage between them was duly consummated. Out of her wedlock with the opposite party she gave birth to a female child.

The petitioner alleges that soon after her marriage, the opposite party inflicted torture on her by various

ways. Ultimately, the opposite party turned her out of his house with her minor child on 1st January, 2020. Getting no other alternative she took shelter at her parental home at 8/3/7/3, Kanta Nagar, P.O. Cossimbazar, Police Station Berhampore, District Murshidabad.

On the allegation of inflicting torture on her, the petitioner lodged an F.I.R. at Berhampore Police Station and the F.I.R. was registered at Berhampore Police Station Case No.471/2020 dated 1st November, 2020 under Section 498A of the Indian Penal Code.

To sustain the livelihood of her daughter and herself, she has brought a maintenance case being M.R. Case No.170 of 2021 under Section 125 of the Code of Criminal Procedure against the opposite party in the court of the learned Chief Judicial Magistrate, Berhampore, Murshidabad.

The aforesaid criminal case brought by the petitioner is also pending in the court of the learned Chief Judicial Magistrate, Berhampore, Murshidabad.

The petitioner came to know that the opposite party brought a Matrimonial Suit being No.208 of 2021 against her seeking dissolution of marriage in the court of the learned Additional District Judge, Kandi, Murshidabad and the suit is now pending in the court of the learned Additional District Judge, Fast Track Court-I, Kandi, Murshidabad.

The distance between the parental home of her and the concerned court at Kandi, Murshidabad is 40 kms. The petitioner is a destitute lady having no source of income. Her parents are aged and ailing persons. Her daughter is too minor. Under such circumstances, it will be hardship for her to appear before the court at Kandi, Murshabad to participate to appear in the Matrimonial Suit. Hence, the prayer.

Since the opposite party has chosen not to contest the revisional application by filing affidavit-in-opposition, the averments and allegations as made in the revisional application shall be deemed to have been uncontroverted.

As I find from the uncontroverted averments in the revisional application, the petitioner is a legally married wife of the opposite party and under some compelling circumstances, she left her matrimonial home and started residing on her parental home with her minor daughter.

As it appears, one criminal case launched by the petitioner under Section 498A against the opposite party is pending in the court of the learned Chief Judicial Magistrate, Berhampore.

Besides, one maintenance case under Section 125 of the Code of Criminal Procedure brought by the petitioner is also pending in the court of the learned Chief Judicial Magistrate, Berhampore.

As submitted by her, the petitioner is a destitute

lady having no source of income and her parents are old and ailing persons. Such circumstances demonstrate that the petitioner will face immense inconvenience if she has to appear before the court at Kandi to participate in the matrimonial proceeding.

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

In view of the above, the revisional application is allowed.

Let the Matrimonial Suit being No.208 of 2021 be withdrawn from the court of the learned Additional District Judge, Fast Track Court-I, Kandi, Murshidabad and the suit be transferred to the court of the learned District Judge, Murshidabad at Berhampore for disposal.

The learned District Judge, Murshidabad may either dispose of the suit himself or herself or transfer the suit to any of the courts of the learned Additional District Judge of Berhampore for disposal.

The learned Additional District Judge, Fast Track Court-I, Kandi is directed to transmit the case records of the Matrimonial Suit to the transferee court immediately after receipt of the copy of the order.

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

With the aforesaid direction, the revisional application being C.O.1282 of 2022 stands disposed of.

No order as to costs.

(Rabindranath Samanta, J.)