

02-08-2022
Item no.99
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO.No.1359 of 2022
Smt. Tulana Mahata
-vs-
Sri Sandip Mahata

Mr. Soumik Ganguly
Mr. Sayan Roy ...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 Midnapore, Paschim Medinipur to the learned District Judge, Bankura.

Learned counsel for the petitioner submits that the facts and circumstances as depicted in the revisional application will demonstrate that the petitioner has made out a case that she will face immense inconvenience, if she is to appear before the concerned court at Midnapore to attend the matrimonial proceeding. As such, learned counsel submits that the matrimonial suit may be transferred from the concerned at Midnapore to the court of learned District Judge, Bankura.

To put succinctly, the petitioner states that her marriage with the opposite party was solemnized on February 13, 2021 according to Hindu rites and customs. The marriage between them was duly consummated.

The petitioner complains that some time after their marriage, the opposite party subjected her to cruelty, both physically and mentally by various ways. Unable to bear with the torture meted out to her, she had to leave her matrimonial home on February 18, 2021 and started residing at her sister's matrimonial home at village Harintuli, P.O. Bikrampur, P.S. Simlapal, district Bankura.

On the allegation of inflicting violence upon her, the petitioner has brought a proceeding under section 12 of the Protection of Women from Domestic Violence Act registered as Misc. Case No.6/8/2022 and the proceeding is pending in the court of learned Judicial Magistrate, 5th Court, Bankura.

After getting summons, the petitioner came to know that the opposite party brought a matrimonial suit being No.1127 of 2021 against her in the court of learned Additional District Judge, 3rd Court at Paschim Medinipur seeking dissolution of marriage between them.

The petitioner states that the distance between her place of stay and the concerned court at Midnapore is nearly 118 kms. She has no means of income. Under such circumstances, it will be hardship for her to appear before the concerned court at Midnapore 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 s.24 CPC application and the materials on record, the petitioner under compelling circumstances had to leave her matrimonial home and now she is residing at her sister's maternal home at Bankura. As I find, Misc. Case No.6/8/2022 brought by the petitioner under section 12 of the Protection of Women from Domestic Violence Act against the opposite party is pending in the court of learned Judicial Magistrate, 5th Court, Bankura. That being so, the opposite party has to appear before the concerned court of the Judicial Magistrate at Bankura to participate in the proceeding. I find no reason to disbelieve that the distance between the present residence of the petitioner and the court at Midnapore is nearly 118 kms. All these demonstrate if the petitioner is to appear before the court at Midnapore, 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.

Having heard learned counsel for the petitioner and considering the facts and circumstances as narrated by the petitioner in the revisional application, I think that it will be wise to withdraw the matrimonial suit from the concerned court at Midnapore and transfer the suit to the concerned court at Bankura.

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

Let the matrimonial suit being No.1127 of 2021 be withdrawn from the court of learned Additional District Judge, 3rd Court at Midnapore, Paschim Mednipur and the suit be transferred to the court of learned District Judge, Bankura for disposal.

The learned District Judge, Bankura may either dispose of the said suit himself/herself or transfer it to any of the competent courts of learned Additional District Judge at Bankura.

The learned Additional District Judge, 3rd Court at Midnapore, Paschim Medinipur 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.1359 of 2022 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]