

15-07-2022

Item no.9
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.1528 of 2022

Smt. Swagata Sahoo

-vs-

Sri Ajoy Sahoo

Mr. Amitabha Ghosh

Mr. Madan Mohan Roy ...for the petitioner

Mr. Probal Kumar Mukherjee

Mr. T.M. Siddiqui

Ms. Shebatee Datta ...for the opposite party

The petitioner in this application under section 24 of the Code of Civil Procedure, 1908 seeks transfer of a matrimonial suit filed by the opposite party-husband from the court of learned Additional District Judge, 13th Court, Alipore, South 24-Parganas to the concerned court at Contai, Purba Medinipur.

It is stated by the petitioner that her marriage with the opposite party was solemnized on July 31, 2009 according to Hindu rites and customs. The marriage between them was consummated and out of their wedlock a female child namely Sumedha was born and she is now aged about 12 years.

It is alleged by the petitioner that after her marriage, the opposite party subjected her to cruelty by various means. Unable to bear with the torture meted out to her, she left her matrimonial home and started residing at her parental home at village Bararasulpur, P.S. Marishda, district Purba Medinipur. The daughter of the petitioner is a student of class VI and studying in a school at Contai, Purba Medinipur.

The petitioner states that she came to know that the opposite party brought a matrimonial suit being No.746 of

2020 against her which is now pending in the court of learned Additional District Judge, 13th Court at Alipore.

The petitioner states that the opposite party has a residence at 9/1A, Ekdalia Place, P.S. Gariahat, Kolkata-19 and he also has an alternative accommodation at his native village at Rautrapur, P.O. Sagareswar, P.S. Ramnagar, Contai, Purba Medinipur.

The petitioner states that the distance between her parental home and the concerned court at Alipore is about 170 kms. To go to Alipore court from her parental home and to come back to her parental home, she will have to travel about 340 kms. spending at least 10 hours. Her daughter is a school-going student. Her father is an aged and ailing person. Under such circumstances, the petitioner prays for transfer of the said matrimonial suit.

It is submitted by learned senior counsel on behalf of the opposite party that since no opposition has been filed by the opposite party, the opposite party denies all the averments/allegations as made in the section 24 CPC application.

As it appears from the documents annexed to the revisional application, the opposite party initially brought a matrimonial suit being No.19 of 2012 against the petitioner seeking dissolution of their marriage, but the said suit was dismissed for default by an order dated October 25/27, 2014 passed by the learned court below. However, the present matrimonial suit being No.746 of 2020 has been brought by the opposite party after the previous suit was dismissed for his non-appearance.

Mr Mukherjee, learned senior counsel appearing for the opposite party, submits that the petitioner brought a revisional application under Article 227 of the Constitution

being CO No.514 of 2022 seeking direction upon learned Additional Judge, 13th Court at Alipore to dispose of all the interlocutory applications first and thereafter to proceed with the suit.

It appears from an order dated March 11, 2022 passed by a co-ordinate single Bench in CO No.514 of 2022 that the learned single Judge directed the learned court below to dispose of the petitioner's application under section 24 of the Hindu Marriage Act, 1955 first within three months, thereafter proceed with hearing of the main suit.

Learned senior counsel for the opposite party referring to a decision of the Hon'ble Supreme Court rendered in the case of Abhilasha Gupta v. Harimohan Gupta reported in (2021) 9 SCC 730 submits that as the aforesaid matrimonial suit proceeded to some extent, the court should not transfer it. He further submits that as directed by the Hon'ble apex court in the aforesaid decision, this court may direct the opposite party to bear all the travelling expenses of the petitioner to appear before the court at Alipore to attend the matrimonial proceeding.

Learned counsel for the petitioner referring to the supplementary affidavit submits that the application preferred by the opposite party before the learned court below seeking visitation right shows that the opposite party resides at his native village at Rautrapur, P.S. Ramnagar, Contai, district Purba Medinipur. Learned counsel, pointing out the inconvenience to be faced by the petitioner, submits that the prayer made by the petitioner should be allowed.

What I find from the order dated March 11, 2022 in CO No.514 of 2022, the learned single Judge directed that

all the interlocutory applications be disposed of first thereafter proceed with the suit. Be that as it may, from the averments made in the section 24 CPC application as well from the materials on record, it appears that presently the petitioner is residing at her parental home with her 12-year-old female child who is a student of class VI of a Contai school. It is her case that her father is aged and ailing and he will not be in a position to accompany her to go at Alipore to attend the matrimonial proceeding.

In a number of decisions, the Hon'ble apex court as well as this court has held that inconvenience of the wife should be a paramount consideration while disposing of an application under section 24 CPC.

However in the decision in Abhilasha Gupta's case (supra), the Hon'ble Supreme Court has held that while the matrimonial suit proceeded to some extent after taking evidence, the husband should bear the travelling expenses of the wife to facilitate her to appear before the concerned court. The decision cited above, in my view, does not neatly apply to the facts as narrated in the application on hand.

Having heard learned counsels for the parties and considering the balance of convenience and inconvenience of the parties, I feel that it would be wise if the suit is withdrawn from the Alipore court and transferred to the Contai court.

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

Let Matrimonial Suit No.746 of 2020 be withdrawn from the court of learned Additional District Judge, 13th Court at Alipore and the suit be transferred to the court of learned Additional District Judge, 1st Court at Contai, Purba Medinipur for disposal.

Learned Additional District Judge, 13th Court at Alipore is directed to transmit the case record of Matrimonial Suit No.746 of 2020 to the transferee court immediately after receipt of a copy of this order.

The transferee court is directed to dispose of the aforesaid matrimonial suit as expeditiously as possible.

The department is directed to communicate a copy of this order to both the learned courts below forthwith.

With the above, CO No.1528 of 2022 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]