

19-07-2022
Item no.14
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO No.1564 of 2022
Smt. Susmita Nandi (Dutta)
-vs-
Sri Suman Dutta

Mr. Prasanta Bishal ...for the petitioner

Affidavit of service filed in court be taken on record.

It appears from the affidavit of service that the opposite party refused to receive the notice. However, learned counsel who represents the opposite party before the learned court below has received the notice. Therefore, it will be presumed that the notice has duly been served upon the opposite party. 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, 2nd Court at Bongaon, North 24 Parganas to the competent court at Barrackpore, North 24 Parganas.

It is stated by the petitioner that her marriage with the opposite party was solemnized on December 6, 2015 according to Hindu rites and customs. The marriage between them was duly consummated and out of their wedlock a female child namely Diya was born on February 15, 2017. After she gave birth to the female child, the opposite party inflicted torture on her all along. Ultimately, she had to leave her matrimonial home in the month of September 2021 and started residing at her parental home at New Barrackpore.

After getting summons, the petitioner came to know that the opposite party brought a matrimonial suit being No.55 of 2022 against her in the court of learned Additional District Judge, 2nd Court at Bongaon seeking dissolution of marriage between them.

The petitioner states that she has brought one maintenance case being Misc. Case No.245 of 2022 under section 125 CrPC against the opposite party in the court of learned Additional Chief Judicial Magistrate, Barrackpore.

The petitioner also states that her father is no more and her daughter is too minor. Her survival depends upon the charity of her mother and her relatives. Her brother is aged about 18 years and is a day-labourer. The distance between her parental home and the concerned court at Bongaon is about 80 kms. Under such circumstances, there is none to accompany her to go to Bongaon court keeping her minor child at her parental home. Hence this prayer.

Since the opposite party has chosen not to contest the revisional application, the facts and circumstances as narrated in the application shall be presumed to have been uncontroverted.

Learned counsel appearing for the petitioner submits that the circumstances as depicted in the section 24 CPC application will demonstrate that it will really be hardship for the petitioner to appear before the court at Bongaon to attend the matrimonial proceeding.

As I find, the father of the petitioner is dead and his brother aged about 18 years is a day-labourer and her daughter is too minor. Therefore, as stated by the petitioner that it will be hardship for her to appear before

the court at Bongaon cannot be ruled out.

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

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

Let the matrimonial suit being No.55 of 2022 be withdrawn from the court of learned Additional District Judge, 2nd Court at Bongaon and the suit be transferred to the court of learned Additional District Judge, 1st Court at Barrackpore for disposal.

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

The learned Additional District Judge, 2nd Court at Bongaon 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.1564 of 2022 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]

