

Ct. 23.8
No. 2022
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C.O. 1894 of 2021

With
C.O.1368 of 2021
Monalisa Dasgupta (Dhar)
-Versus-
Soumya Dasgupta

Mr. Shibaji Kumar Das
Ms. Rupsa Sreemani **...For the Petitioner**

Mr. Jayanta Narayan Chatterjee
Mr. Paramita Mukherjee
Ms. Moumita Pandit
Ms. Nandini Chatterjee
Ms. Jayashree Patra **...For the Opposite Party**

The revision application, being C.O. 1368 of 2021 is for transfer of a matrimonial suit from the Court of the learned Additional District Judge, 3rd Court at Alipore, South 24-Parganas to the Court of the learned District Judge, Nadia or to the concerned Court of the learned Additional District Judge and the revisional application, being C.O. 1894 of 2021 is for transfer of one Act-VIII case from the Court of the learned District Judge, South 24-Parganas at Alipore to the Court of the learned District Judge, Nadia or to the concerned Court of the learned Additional District Judge.

Shorn of details, the facts which are common in both the revisional applications may be stated as follows :

The petitioner, Monalisa Dasgupta (Dhar) was married to the opposite party, Soumya Dasgupta on 19th April 2015 and their marriage was registered under the provisions of Special Marriage Act, 1954. The marriage between them was duly consummated. Out of her wedlock with the opposite party, the petitioner gave birth to a female child, namely, Shrosthha Dasgupta, who is now aged about five years. The petitioner complains that soon after her marriage, the opposite party subjected her to cruelty by

various ways. On the allegations of torture inflicted upon her she lodged an FIR at Parnasree Police Station and the FIR was registered as Parnasree Police Station Case No. 192 of 2021 dated 24th July, 2021 under Sections 498A/406/506/34 of the Indian Penal Code read with Sections 3/4 of the Dowry Prohibition Act. The petitioner avers that because of the torture inflicted upon her by the opposite party, she had to leave her matrimonial home and started residing at her parental home at Village & Post Office – Gayespur, Police Station – Kalyani, District – Nadia with her minor child.

The petitioner states that the opposite party filed the matrimonial suit, being No. 1743 of 2021 against her seeking dissolution of marriage in the Court of the learned District Judge, South 24-Parganas at Alipore and the suit is now pending in the Court of the learned Additional District Judge, 3rd Court, Alipore. Besides, the opposite party has brought one Act-VIII case, being No. 100 of 2021 against her in the Court of the learned District Judge, South 24-Parganas at Alipore.

She further states that her child now stays with her at her parental home. she submits that the distance between her parental home and the Court at Alipore is about 90 kms. The father of the petitioner is dead and her mother afflicted with the deadly disease cancer is now bedridden. She has no source of income. Under such circumstances, it will be hardship for her if she has to appear before the Court at Alipore to attend the matrimonial proceeding as well as Act-VIII proceeding. Hence, the prayer.

The opposite party contests both the two

revisional applications by filing two separate affidavits-in-opposition. In his affidavits-in-opposition, the opposite party denies the averments and allegations as made by the petitioner against him. It is his assertion that the petitioner often comes to Kolkata and visits different restaurants, etc. As such there will be no difficulty on her part to attend the matrimonial proceeding and the proceedings of Act-VIII case before the learned concerned Courts at Alipore. On such ground the opposite party seeks dismissal of the revisional applications.

Learned Lawyer appearing for the petitioner submits that the child of the petitioner now stays with the petitioner at her parental home. Referring to Section 9 of the Guardians and Wards Act, 1890 learned Lawyer submits that since the petitioner's child ordinarily resides with her at her parental home, the Act-VIII case ought to have been filed in the Court under whose jurisdiction the petitioner resides. Taking the Court to several documents annexed to the application, learned Lawyer submits that father of the petitioner is now dead and her mother is bedridden due to cancer. On such score, learned Lawyer submits that the petitioner having no source of income will face immense hardship if she is to appear before the concerned Courts at Alipore.

Per contra, learned Lawyer appearing for the opposite party by referring to several documents annexed to the affidavits-in-opposition submits that the petitioner often roams Kolkata and visits different restaurants, etc. Such being the factual scenario, it will not be inconvenient on her part to appear before the concerned Courts at Alipore for the aforesaid two proceedings.

Admittedly, the petitioner is the legally married wife of the opposite party and their marriage was registered on 19th April 2015 under the provisions of Special Marriage Act, 1954. It is not in dispute that because of some compelling circumstances, the petitioner left her matrimonial home and started residing at her parental home. The petitioner submits that her minor child is now staying with her at her parental home. However, the opposite party asserts that the petitioner with her child now resides at her maternal grandfather's house at Batanagar under the jurisdiction of Maheshtala Police Station, Kolkata – 700 140 within the Judgeship of the learned District Judge, South 24-Parganas.

On consideration of the averments in the revisional applications and the affidavits-in-opposition I find that the petitioner is now residing at her parental home with her minor child. It is trite to say that in terms of Section 9 of the Guardians and Wards Act, 1890 the application under relevant provisions of the Guardians and Wards Act should be filed in the Court under whose jurisdiction the person ordinarily resides with his/her child. That being the legal position, the Act-VIII case should be heard and disposed of by the concerned Court under the Judgeship of Nadia.

What it transpires from the averments in the revisional applications and the materials on record, the petitioner has lost her father. Her mother is afflicted with the deadly disease cancer. The child of the petitioner is aged about five years. As submitted by the petitioner, she has no income to sustain her livelihood. Besides, the distance between her parental home and the Court at Alipore is about 90 kms. These facts and circumstances demonstrate that the

petitioner will face inconvenience if she has to appear before the concerned Courts at Alipore to participate in the matrimonial proceeding as well as the proceeding of Act-VIII case.

The Hon'ble Apex Court in a catena of decisions in the cases of *Rajani Kishor Pardeshi Vs. Kishore Babulal Pardeshi*, reported in (2005) 12 SCC 237; *Smita Sharma Vs. Vivek Sharma*, reported in (2004) 13 SCC 607; *Neelima Rani Vs. Srikanth*, reported in (2005) 12 SCC 387; *Usha Choudhari Vs. Dilip Choudhary*, reported in (2004) 13 SCC 683 and *Sumita Singh Vs. Kumar Sanjay and Anr.*, reported in AIR 2002 SC 396 has held that inconvenience of wife should be of paramount consideration while disposing of an application under Section 24 of the Code of Civil Procedure. All these decisions neatly apply to the facts and circumstances as narrated by the petitioner in her revisional applications. This Court is not satisfied with the defence taken by the opposite party that the petitioner for the purpose merriment roams Kolkata and visits restaurants, etc. and for this reason she can appear before the learned Courts at Alipore.

Learned Lawyer for the opposite party alternatively submits if the Court desires to transfer the aforesaid two proceedings, those may be transferred to the concerned Court at Barasat or Barrackpore, North 24-Parganas.

Having heard the learned Lawyers appearing for the parties and considering the balance of convenience and inconvenience of the parties I feel that it will be wise to withdraw the aforesaid matrimonial suit as well the Act-VIII case from the Courts at Alipore and transfer the suit and the

Act-VIII case to the Court of the learned Additional District Judge at Kalyani, Naida.

In view of the above, the revisional applications are allowed.

Let the Matrimonial Suit, being No. 743 of 2021 be withdrawn from the Court of the learned Additional District Judge, 3rd Court at Alipore, South 24-Parganas and the Act-VIII case also be withdrawn from the Court of the learned District Judge, South 24-Parganas at Alipore and both the suit and the Act-VIII case be transferred to the Court of the learned Additional District Judge at Kalyani, Nadia for disposal.

The learned Additional District Judge, 3rd Court at Alipore and the learned District Judge, Alipore are directed to transmit the case records of the matrimonial suit and Act-VIII case to the transferee Court immediately after receipt of a copy of the order.

With the aforesaid directions, C.O. 1895 of 2021 and C.O. 1368 of 2021 stand disposed of.

There will, however, be no order as to costs.

Let a copy of this order be communicated to both the Courts below for information and compliance.

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis upon compliance of all formalities.

(Rabindranath Samanta, J.)