

22-07-2022
Item no.17
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO No.1673 of 2022
Smt. Shilpa Karmakar
-vs-
Rajesh Karmakar

Mr. Nimai Chandrar Konar
Mr. Mihir Kumar Das ...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 District Judge, Jhargram to the learned District Judge, Bankura.

Briefly stated, the petitioner states that her marriage with the opposite party was solemnized on December 1, 2019 according to Hindu rites and customs. The marriage between them was duly consummated, but no child was born out of their wedlock.

The petitioner complains that the opposite party with his family members subjected her to cruelty, both physically and mentally. Unable to bear with the torture meted out to her, she had to leave her matrimonial home and started residing at her parental home at village Jagannathpur, Beliatore, Bankura.

On the allegations of torture upon her, the father of the petitioner lodged an FIR at Beliatore police station under sections 498A/325/307 IPC. The petitioner has brought a proceeding under section 12 of the Protection of Women from Domestic Violence Act, 2005 and has also launched a criminal case on the allegations of torture upon her brought against the opposite party and the proceedings are pending in the court of learned Judicial Magistrate, Bankura.

After getting summons, the petitioner came to know that the opposite party brought a matrimonial suit being No.39 of 2022 under section 9 of the Hindu Marriage Act, 1955 against her in the court of learned District Judge, Jhargram seeking restitution of conjugal rights.

The petitioner states that her mother is no more and her father is an aged and ailing person. The distance between her parental home and the concerned court at Jhargram is about 150 kms. Under such circumstances, it will be hardship for her to appear before the concerned court at Jhargram 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, a proceeding under section 12 of the Protection of Women from Domestic Violence Act and a criminal case launched on the allegations of torture upon the petitioner brought against the opposite party are pending in the court of learned Judicial Magistrate, Bankura. That being so, the opposite party will have to

appear before the court or courts at Bankura to attend the aforesaid proceedings. As submitted by learned counsel for the petitioner, the mother of the petitioner is dead and her father is aged and ailing person. The distance between the petitioner's parental house and the concerned court at Jhargram is about 150 kms. All these demonstrate if the petitioner is to appear before the court at Jhargram, she will face immense hardship.

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 of the Code.

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

Let the matrimonial suit being No.39 of 2022 be withdrawn from the court of learned District Judge, Jhargram 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 at Bankura for disposal.

The learned District Judge, Jhargram 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.1673 of 2022 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]

