

Ct. 04.8
No. 2022
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C.O. 1685 of 2022
Mousumi Pal (Poddar) @ Mausumi Poddar
-Versus-
Sujit Pal

Mr. Suhrid Sur
Mr. Anirban Guin **...For the Petitioner**

Mr. Sankha Prasad Roy **...For the Opposite Party**

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of a matrimonial suit from the Court of the learned Additional District Judge, Fast Track Court-II, Raiganj, Uttar Dinajpur to the Court of the learned District Judge, Murshidabad at Berhampore.

Learned Lawyer appearing for the petitioner submits that the facts as narrated in the application will demonstrate that the petitioner will face immense inconvenience if she has to appear before the concerned Court at Raiganj, Uttar Dinajpur to participate in the matrimonial proceeding. Learned Lawyer points out that the daughter of the petitioner has brought a proceeding under the Protection of Women from Domestic Violence Act against the opposite party and the said proceeding is pending in the Court of the learned Judicial Magistrate, 1st Court, Berhampore, Murshidabad. Under such circumstances, learned Lawyer urges that the matrimonial suit be transferred to the Court of the learned District Judge, Murshidabad at Berhampore.

On the other hand learned Lawyer appearing for the opposite party submits that the opposite party is a Headmaster of a High School and it will be inconvenient for him to leave the school to appear before the Court at Berhampore, Murshidabad, travelling a long distance. Learned Lawyer submits that the issues of the matrimonial

suit have been framed and as such, at this stage it will not be wise to transfer the matrimonial suit.

To put succinctly, it is stated by the petitioner, Mousumi Pal (Poddar) @ Mausumi Poddar that her marriage with the opposite party was solemnized on 4th February, 2002 according to Hindu Rites and Customs. The marriage between them was duly consummated and out of her wedlock with the opposite party, she gave birth to a female child on December 16, 2002. The petitioner is an Assistant Teacher of a Girls School. Previously she was posted at Tarangapur Girls Junior High School, Uttar Dinajpur. On September 15, 2021, she was transferred to a School, namely, Manindranagar Girls' High School, Cossimbazar Raz, P.S. Berhampore, Murshidabad.

Since, she was transferred from previous school, the petitioner has been staying at her parental home at Goaljan Colony Dakshin (Part), Goaljan, Berhampore, Murshidabad.

The opposite party has filed the matrimonial suit, being No. 53 of 2004 against her seeking dissolution of marriage and the said suit is now pending in the aforesaid Court at Raiganj. The petitioner states that the distance between her parental home and the Court at Raiganj is about 300 kms. The daughter of the petitioner who has now attained majority has brought a proceeding under the Protection of Women from Domestic Violence Act against the opposite party and this proceeding is now pending in the Court of the learned Judicial Magistrate, 1st Court, Berhampore, Murshidabad.

The petitioner complains that because of the

strained relationship between them, the opposite party may bodily heckle her if she appears before the Court at Raiganj. Hence, the prayer for transfer of the matrimonial suit.

Admittedly, the petitioner was married to the opposite party on February 04, 2002 and out of their wedlock, a female child was born on December 16, 2002. The female child of them has now attained majority.

It is not in dispute that the petitioner after being transferred from a Junior Girls High School in Uttar Dinajpur is now a teacher of Manindranagar Girls' High School, Cossimbazar Raz, Murshidabad. It is also not in dispute that the petitioner is now residing at her parental home and from her parental home she attends her school.

Admittedly, the matrimonial suit, being No. 53 of 2004 brought by the opposite party was initially decreed ex parte. Thereafter, the petitioner by filing an application under Order IX Rule 13 of the Code of Civil Procedure sought for setting aside of the ex parte decree. The application filed by her was allowed and the suit was restored to its original file. It is also an admitted fact that as against the order passed by the learned Court below, the opposite party preferred a revisional application under Article 227 of the Constitution of India for setting aside of the order passed by the learned Court below. But, the revisional application preferred by the opposite party, was dismissed by this Court. As against the order of dismissal of the revisional application, the opposite party moved before the Hon'ble Apex Court by preferring a Special Leave Petition and the said SLP was also dismissed.

After dismissal of the Special Leave Petition, matrimonial suit was set in motion for further hearing. As pointed out by the learned Lawyer appearing for the opposite party, the issues of the suit have been framed.

Now, the question is whether the matrimonial suit pending in the concerned Court at Raigunj needs to be transferred. As stated above, the petitioner under circumstances as indicated above is now staying at her parental home. She is an Assistant Teacher of a School, which is within the District – Murshidabad. The distance between the parental home of the petitioner and the Court at Raigunj is nearly 300 kms.

From the photocopy of an order passed in Misc. Case No. 133 of 2021 under the Protection of Women from Domestic Violence Act it appears that the daughter of the petitioner has brought this proceeding against the opposite party on the allegations of perpetrating violence upon her. Since, this proceeding is pending in the Court of a learned Judicial Magistrate, Berhampore, the opposite party has to appear before the Magistrate's Court at Berhampore.

In a catena of decisions rendered by the Hon'ble Apex Court and this Hon'ble High Court, it has been held that inconvenience of wife should be of paramount consideration while disposing of an application under Section 24 of the Code of Civil Procedure.

Having heard the learned Lawyer 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 from the Court of

the learned Additional District Judge, Fast Track Court-II, Raiganj, Uttar Dinajpur and transfer the suit to the Court of the learned District Judge, Murshidabad at Berhampore.

In view of the above, the revisional application is allowed.

Let the Matrimonial Suit, being No. 53 of 2004 be withdrawn from the Court of the learned Additional District Judge, Fast Track Court-II, Raiganj, Uttar Dinajpur and the suit be transferred to the Court of the learned District Judge, Murshidabad at Berhampore for disposal.

The learned Additional District Judge, Fast Track Court-II, Raiganj, Uttar Dinajpur is directed to transmit the case record of the matrimonial suit to the transferee Court immediately after receipt of a copy of the order.

Learned District Judge, Murshidabad at Berhampore, may dispose of the suit either himself/herself or transfer the suit to any of the competent Courts at the station for disposal.

With the aforesaid direction, C.O. 1685 of 2022 stands 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.)