

23-11-2022
Item no.164
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.2015 of 2022
Tanushree Jha (Mishra)
-vs-
Suman Jha

Mr. Dhananjay Banerjee
Mr. Anup Kumar Bhowmick ...for the petitioner

Affidavit of service filed in court be taken on record.

Despite service of notice, there is no representation on behalf of 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 pending in the court of learned Additional District Judge, 13th Court, at Alipore to the court of learned Additional District Judge, Jangipur, Murshidabad.

The petitioner states that her marriage with the opposite party was registered on October 22, 2018. The petitioner alleges that some time after their marriage, the opposite party with his family members started inflicting mental and physical torture upon her on various ways demanding further money and forced her to transfer the paternal properties of the petitioner in favour of the opposite party. The degree of torture was increased to such a level that the husband along with his family members tried to kill her by pressing pillow on her mouth and asked the petitioner to pay Rs.10,00,000/- from her parents. Ultimately, on August 2, 2020, the petitioner was driven out from her matrimonial home and since then she started

residing at her parental home at Farakka, Murshidabad.

On the allegations of torture upon her, the petitioner filed a complaint against the opposite party in the court of learned ACJM, Jangipur, Murshidabad. under section 498A/34 IPC. Besides, in order to sustain her livelihood, she has also brought a maintenance case being M.R. Case No.77 of 2022 under section 125 CrPC against the opposite party and the case is pending in the court of learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad.

The petitioner came to know after receiving summons that the opposite party all on a sudden brought a Matrimonial Suit being No.1215 of 2022 against her seeking restitution of conjugal rights which is now pending before the court of learned Additional District Judge, 13th Court at Alipore.

The petitioner further submits that she has been suffering from pain in spinal chord for several months and the doctors has instructed her to take rest and to avoid journey. The distance between her parental home at Farakka and the concerned court at Alipore is about 317 kms. in one way and it involves journey of about 7½ hours. She has no source of income. Under such circumstances, it will be hardship for her to appear before the concerned court at Alipore 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 revisional application remain uncontroverted.

What I find from the uncontroverted averments in the s.24 CPC application supported by affidavits, the

petitioner under some compelling circumstances had to leave her matrimonial home and started residing at her parental home at Farakka, Murshidabad. Moreover I find, the petitioner launched a case under section 498A/34 IPC which is pending in the court of learned ACJM, Jangipur, Murshidabad. Besides, in order to sustain herself, she has brought a maintenance case being M.R. Case No.77 of 2022 under section 125 CrPC against the opposite party and the case is pending in the court of learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad. The opposite party would be required to appear before the court at Jangipur to attend the aforesaid proceedings. The distance between the petitioner's parental home and the concerned court at Alipore is about 317 kms. Moreover, the petitioner alleges that she has no source of income. All these demonstrate, if the petitioner is to appear before the court at Alipore, she will face hardship.

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

Having heard learned counsel for the petitioner and considering the facts and circumstances as above, I feel that it would be wise to withdraw the matrimonial suit from the concerned court at Alipore and be transferred to the court of learned Additional District Judge, Jangipur, Murshidabad.

In view of the above, the revisional application being CO No.2015 of 2022 is allowed with the following order.

Learned District Judge, South 24-Parganas is hereby directed to withdraw the matrimonial suit being No.1215 of 2022 from the court of learned Additional

District Judge, 13th Court at Alipore and to transmit the case record of the aforementioned matrimonial suit to the learned District Judge, Murshidabad at Baharampur within three weeks from the date of communication of this order, who in turn will transfer the same to the court of learned Additional District Judge, Jangipur, Murshidabad within three weeks thereafter. The transferee court shall give a fresh notice to both the parties intimating the next date of hearing before proceeding further with the suit.

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

No order as to costs.

Certified copy of this order, if applied for, be made available to the parties.

[Ajoy Kumar Mukherjee, J]