

01-07-2022
Item no.23
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO. No.1958 of 2021
Smt. Madhuparna Mahadani (nee Mukherjee)
-vs-
Sri Soudeep Mahadani

Mr. Tanmoy Sett
Mr. Pran Gopal Das ...for the petitioner

Mr. Pinak Kumar Mitra
Ms. Ariba Shahab ...for the opposite party

The petitioner by way of this application under section 24 of the Code of Civil Procedure, 1908 seeks transfer of a matrimonial suit filed by the opposite party from the court of learned District Judge, South 24-Parganas at Alipore to the court of learned District Judge, Howrah.

To put succinctly, it is the case of the petitioner that her marriage with the opposite party was solemnized on January 21, 2016 according to Hindu rites and customs. Their marriage was duly consummated; and out of their wedlock, a male child was born on June 13, 2019.

It is alleged by the petitioner that soon after her marriage, the opposite party and his family members inflicted torture, both physically and mentally, upon her. Unable to bear with the torture, she had to leave her matrimonial home and started residing at her parental home at Howrah. On the allegations of torture on her, the petitioner lodged an FIR which was registered as Batra P.S. Case No.168 of 2020 under sections 498A/406 IPC read with sections 3/ 4 of the Dowry Prohibition Act.

The petitioner has also filed an application under section 12 of the Protection of Women from Domestic

Violence Act, 2005 registered as Misc. Case No.410 of 2020 against the opposite party in a court of Judicial Magistrate at Howrah.

On the other hand, the opposite party filed an application under the Guardians and Wards Act against the petitioner which was registered as Act VIII Case No.23/2020 in the court of learned District Judge, Howrah.

The petitioner states that after receiving a summons from a court of Alipore, she came to know that the opposite party filed a matrimonial suit being No.1190 of 2021 under sections 27(1)(b)(d)(e) of the Special Marriage Act, 1954 against her in the court of learned District Judge, South 24-Parganas at Alipore.

The petitioner's case is that since three cases are pending in the concerned courts at Howrah and her child is minor and suffering from a critical disease, it will be hardship for her to attend the matrimonial proceeding before the court of learned District Judge at Alipore. Hence the prayer for transfer.

Learned counsel for the petitioner submits that out of the three cases, one case being Misc. Case No.410 of 2020 under section 12 of the Protection of Women from Domestic Violence Act, 2005 has already been disposed by the concerned court at Howrah. Learned counsel points out that as two other cases – one filed by the petitioner and another by the opposite party – are pending in the concerned courts at Howrah, the matrimonial suit may be transferred to the court of learned District Judge, Howrah.

Learned counsel for the opposite party submits that the court may consider that the matrimonial suit may be transferred from the concerned court at Alipore to a family court at Kolkata.

It is not in dispute that a criminal case launched by the petitioner under sections 498A/406 IPC is pending in a court of the learned Judicial Magistrate at Howrah and another case being Act VIII Case No.23 of 2020 brought by the opposite party is pending in the court of learned District Judge, Howrah. Besides, as submitted by learned counsel for the petitioner, the child of the petitioner is a special child suffering from a critical disease.

Having heard learned counsels appearing for the parties and considering the balance of convenience and inconvenience of the parties, I feel that it would be wise to withdraw the matrimonial suit from the court of learned District Judge, South 24-Parganas and transfer it to the court of learned District Judge, Howrah.

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

Let the matrimonial suit being No.1190 of 2021 be withdrawn from the learned District Judge, South 24-Parganas at Alipore and the suit be transferred to the learned District Judge, Howrah for disposal.

The learned District Judge, Howrah may dispose of the said suit himself/herself or transfer the suit to any of the courts of learned Additional District Judge, Howrah for disposal.

Learned District Judge, South 24-Parganas at Alipore is directed to transmit the case record of the said matrimonial suit to the transferee court, if the suit is pending in his court; and if the suit has been transferred to any court of learned Additional District Judge at Alipore, he shall instruct the concerned court to transmit the case record to the transferee court immediately after receipt of a

copy of this order.

The department is directed to communicate this order to both the learned courts below forthwith.

CO No.1958 of 2021 is thus disposed of. No order as to costs.

[Rabindranath Samanta, J]