

Ct. 26.7
No. 2022
14

C.O. 1477 of 2020

Smt. Debjani Chatterjee (Roy)

-Versus-

Sri Sraban Kumar Chatterjee @ Shraban

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akb

Mr. Saptarshi Chattopadhyay

Mr. Rudraksha Chattopadhyay

...For the Petitioner

Mr. Kingsuk Mondal

...For the Opposite Party

This revisioinal application under Section 24 of the Code of Civil Procedure has been filed seeking transfer of a matrimonial suit from the Court of the learned District Judge, Murshidabad at Berhampore, to the Court of the learned Additional District Judge at Barrackpore, District – North 24-Parganas.

To put succinctly, it is stated by the petitioner, Smt. Debjani Chatterjee (Roy) that she was married to the opposite party, Sri Sraban Kumar Chatterjee @ Shraban on December 12, 2014. The marriage between them was duly consummated and she out of her wedlock with the opposite party gave birth to a female child.

It is alleged by the petitioner that soon after her marriage, the opposite party and his family members, specially the father of the opposite party subjected her to cruelty by various means. Because of the torture meted out to her, she lodged an FIR at Berhampore Police Station and the FIR was registered aa Berhampore Police Station Case No. 764 dated August 05, 2016 under Sections 498A/324/307/34 of the Indian Penal Code. Under such compelling circumstances, she had to leave her matrimonial home. However, on persuasion on the part of the opposite party, she came back to her matrimonial home but she was again subjected to torture. Because of such torture, she left her matrimonial home and started residing at her parental

Home at 270 Siraj Mondal Road, Post Office – Kanchrapara, Police Station – Bijpur, District – North 24-Parganas. The petitioner further complains that the opposite party intimidated her and over such allegation, she lodged a complaint at Cyber Crime Police Station under Barrackpore Police Commissionerate.

The petitioner submits that she has no source of income and now she is penniless. In order to sustain livelihood of her child and herself she has filed a maintenance case, being No. 540 of 2017 under Section 125 of the Code of Criminal Procedure against the opposite party in the Court of the learned Additional Chief Judicial Magistrate at Barrackpore.

The petitioner came to know that the opposite party brought a matrimonial suit, being No. 19 of 2020 against her in the Court of the learned District Judge at Berhampore, District - Murshidabad under Section 13 of the Hindu Marriage Act seeking dissolution of marriage between them.

The petitioner states that her daughter is minor. Her father is an aged and ailing person. The distance between her parental home and the Court at Berhampore is 156 kms. Under such circumstances, it will be hardship for her to appear before the learned District Judge at Berhampore to attend the matrimonial proceeding. Hence, the prayer.

The opposite party in his affidavit-in-opposition denies the averments and allegations as made in the revisional application.

Learned Lawyer appearing for the petitioner submits that the facts and circumstances as narrated by the petitioner in the revisional application will demonstrate that it will be hardship for the petitioner to appear before the learned District Judge at Berhampore to participate in the matrimonial proceeding. Learned Lawyer by citing a number 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 Choudhary Vs. Dilip Choudhary*, reported in (2004) 13 SCC 683 and *Sumita Singh Vs. Kumar Sanjay and Anr.*, reported in AIR 2002 SC 396 submits that inconvenience of wife should be of paramount consideration while disposing of an application under Section 24 of the Code of Civil Procedure. By referring to another decision in the case of *Madhu Saxena Vs. Pankaj Saxena*, reported in (2005) 13 SCC 158 learned Lawyer submits that if the wife has no source of income and she is completely dependent on her relative in that event, the Court may favourably consider her plea of transfer of the matrimonial suit.

Per contra, learned Lawyer appearing for opposite party by referring to a decision in the case of *Dipika Agarwal @ Dipika Khaitan Vs. Rishi Agarwal*, reported in (2019) 3 Cal. L.T. 537 submits that only inconvenience of the wife should not be the ground for transfer of a matrimonial suit in one Court to another Court. He points out that one criminal case launched by the petitioner was pending before the Court of the learned Judicial Magistrate at Berhampore and the petitioner attended the criminal proceeding there. On such score learned Lawyer submits that the prayer made by the petitioner is liable to be rejected.

What it transpires from the averments as made in the application and the materials on record, the petitioner under a compelling circumstances left her matrimonial home and she is now residing at her parental home at the address as stated hereinbefore. Admittedly, the petitioner has a minor daughter. Her father is an aged and ailing person. It is not in dispute that one maintenance case, being 540 of 2017 brought by the petitioner against the opposite party seeking maintenance allowance is pending in the Court of the learned 5th Judicial Magistrate, Barrackpore. That being so, the opposite party will have to appear before the Court at the learned Judicial Magistrate at Barrackpore to attend the maintenance proceeding.

In the decisions as cited above, the Hon'ble Apex Court 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. True, in the case of *Dipika Agarwal @ Dipika Khaitan (Supra)* a Single Bench of this Hon'ble High Court has held inconvenience of a wife could not be the sole ground for withdrawal of matrimonial suit from one Court to another.

Having heard the learned Lawyer appearing for the parties and on consideration of the plethora of decisions of the Hon'ble Apex Court as well as this Hon'ble High Court and the circumstances as projected by the petitioner in the revisional application I think that it will be hardship for the petitioner to appear before the learned District Judge, Murshidabad at Berhampore to attend the matrimonial proceeding. In such view, I think that the matrimonial suit should be withdrawn from the Court of the learned District Judge, Murshidabad at Berhampore and transferred

to the Court of the learned Additional District Judge, 1st Court at Barrackpore.

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

Let the Matrimonial Suit, being No. 19 of 2020 be withdrawn from the Court of the learned District Judge, Murshidabad at Berhampore and the suit be transferred to the Court of the learned Additional District Judge, 1st Court at Barrackpore, District - North 24-Parganas for disposal.

Learned Additional District Judge, 1st Court at Barrackpore, District – North 24-Parganas may dispose of the suit either by himself/herself or transfer the suit to any of the Courts of learned Additional District Judge at the station for disposal.

The learned District Judge, Murshidabad at Berhampore is directed to transmit the case record of the matrimonial suit to the transferee Court immediately after receipt of a copy of the order.

With the aforesaid direction, C.O. 1477 of 2020 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.)