

Item no.6
28.02.2025
P.A
Court No.7

CO 740 of 2015

**Smt. Jyostna Bhattacharjya (Sharma).
Vs.
Sri Sitaram Bhattacharyya**

*Ms. Sima Ghosh ,
Mr.Sanjoy Patra,*

...for the petitioner.

1. This is an application u/s 24 of CPC filed by the wife/ petitioner with a prayer to transfer the matrimonial suit No 97 of 2014 pending before the court of Learned District Judge ,Hooghly at Chinsurah, u/s 13(1) (ia)and 13 (1) (ib) of Hindu Marriage Act 1955 to the District Judge's court at 24 Parganas North.
2. None appears on behalf of the Opposite Party.
3. The Learned Advocate appearing on behalf of the petitioner submits that on 17.2.25 when this matter was listed, the Opposite Party did not turn up despite service of notice effected upon him. The Ld. advocate filed the affidavit of service showing compliance with the direction of Hon'ble Justice Madhuresh Prasad passed on 24.05.24.
4. It is the contention of the Ld Advocate that the marriage was solemnised on 22.04.1991 and they started living together as husband and wife and were blessed with a girl child but the marital discord cropped up between the parties on account of an illicit relationship developed between the present Opposite Party husband with another woman .On 26.09.2007, an order of maintenance

was granted by the court of Learned CJM Barasat, 24 Parganas, North against the husband Opposite Party directing him to pay Rs.1500 for herself and Rs. 2000 for their minor daughter as maintenance allowance per month.

5. The ld. Advocate further submits that several miscellaneous execution cases due to non payment of maintenance amount, had to be filed by the present petitioner in the District Court at Barasat followed by an order of warrant issued against him. The husband also filed the criminal revisional proceeding being CRR 155 of 2009, against such order of warrant issued against him. This Hon'ble Court on 29.04.2009 was pleased to direct the Opposite Party to pay Rs. 10,000 out of Rs. 17,500 within 15 days from the date of communication of the order and the husband has failed to clear the entire amount as on date.
6. This has caused serious hardship to the petitioner and she along with her minor girl are passing their days without any financial support from the Opposite Party husband, who is an employee of Government of India under Postal Department. The petitioner being deserted and alone woman without having any income with the responsibility of maintaining her ailing and aged mother, regularly finds it difficult to attend the court of Learned District Judge Hooghly at Chinsurah in

order to contest the matrimonial suit pending before the Learned Court and since the other proceedings are pending before the Barasat court it would be convenient for her to contest the suit as well as the other proceedings at Barasat court.

7. On perusal of the record, it transpires that vide an order dated March 25, 2015 a co-ordinate bench of this Hon'ble Court after contested hearing, was pleased to direct the Opposite Party to file an affidavit in opposition within a period of 3 weeks from the date of passing of such order. Furthermore an interim order of stay of all further proceeding in the MAT 09.07.2015 was passed by the Hon'ble Court till the end of June 15 or until further order whichever is earlier. It is also submitted that said proceeding is stayed since thereafter and files a handwritten note showing the case fixed on 10.06.25 for bringing an order from the upper court.
8. It can very well be said from the averment made in the petition supported by an affidavit that despite repeated opportunity given to the husband /opposite party he failed to comply with the direction of this Hon'ble Court either to appear and controvert the allegations levelled against him or to comply with the direction to pay the arrear maintenance.
9. It is a fact that in compliance with such order a

copy of this revisional application along all annexure with the forwarding letter of the Ld advocate was sent on 06.03.2015 .The affidavit of service filed before the court earlier and on the last date of hearing supported with the track reports confirms such delivery on 11.03.2015. Subsequently when the matter appeared on 04.03.2015, no one appeared on behalf of the Opposite Party and accordingly a fresh direction was given to the petitioner to serve the copy of application to the Opposite Party afresh. This court finds some negligence on the part of this petitioner as her non appearance resulted this revisional application to be dismissed for default on 11.06.2019, however opposite party also did not turn up on that day. Interestingly the ld advocate of the opposite party appeared when prayer for recalling such order of dismissal filed by the petitioner was allowed after condoning the delay, on 21.02.2022. So the husband was aware about the restoration of this revisional application and it's prayer to transfer the proceeding from the District Court of Hooghly to the district court at Barasat. On several occasion thereafter the matter was listed before the co-ordinate Bench of this Hon'ble Court but the Opposite Party never appeared, lastly, on 24.05.2024 liberty was granted to the petitioner to

serve a notice afresh to the Opposite Party and to file affidavit of service. The opposite party did not appear on the date of hearing.

10. In this chequered backdrop of the case and the uncontroverted allegations against the husband /opposite part this court is to decide as to whether the prayer of the petitioner is justified nor not.

11. The court while dealing with the transfer of a matrimonial matter must consider the economic soundness of either of the parties, the social strata of the spouses, standard of lifestyle and the convenience of the party seeking transfer even though the plaintiff is a *dominus litis* and is entitled to file a suit in any forum allowable by the code.

12. The Supreme Court has also observed that while considering an application u/s 24 CPC the court must consider the comparative hardship and genuine difficulty of the parties in attending a particular suit to contest the suit and that should be the prime consideration while disposing of the application u/s 24 CPC .In the instant case admittedly the present petitioner being the defendant/wife in the matrimonial suit filed by the husband for a decree of divorce, will have to travel from the district of 24 Parganas North to Chinsurah as she is at present is residing Hatiara, p.s Rajarhat in the district of 24 pargans North. Furthermore she is saddled with the

responsibility to maintain her minor daughter along with her own ailing mother.

13.The husband did not file any written objection in compliance with the direction of this Hon'ble court to refute the allegations levelled against him. The respondent did not pay the maintenance amount regularly resulting the petitioner to knock the door of the court on repeated occasions.

14.Upon conspectus of the entire facts and circumstances, this court is of the considered view that/wife has been able to establish her grounds and the inconvenience in attending the court at Chinsurah ,Hooghly to contest a proceeding initiated by the opposite party /husband and it would serve the ends of justice better if the suit is transferred to the District judge's court at Barasat.

15.This revisional application is allowed ex-parte against the Opposite Party. The Matrimonial suit being 97 Of 2014 now pending before the court of Learned District Judge Hooghly be transferred to the Learned District Judge 24 Parganas North, Barasat. The interim if any stands vacated.

16.The petitioner is directed to send a copy of this order to the Opposite Party by speed post within a period of 7 days from the date of receiving of the copy of the order.

17.Let a copy of this order to send to the Office of the Learned District Judge 24 Parganas North, and the Learned District Judge 24 Parganas, South at an earliest by the department for the information and necessary compliance.

Urgent certified copy of this order, if applied for, be given to the Ld. advocates for the parties on usual formalities.

(Chaitali Chatterjee Das, J.)