

28-07-2022
Item no.84
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction

CO No.2060 of 2021
Aditi Banerjee nee Chattopadhyay
-vs-
Sukalpo Banerjee

Mr. Malay Bhattacharyya
Mr. Subhrajyot Gholsh
Ms. Shefa Mondal ...for the petitioner

Affidavit of service filed in court be taken on record.

It appears from the affidavit of service that notice has duly been served upon the opposite party as well as learned counsel who represents the opposite party before the learned court below. Despite notice, there is no representation on behalf of him. 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 from the court of learned District Judge, South 24 Parganas at Alipore to any of the competent courts in the judgeship of Bankura.

The petitioner states that her marriage with the opposite party was solemnized on August 4, 2021 according to Hindu rites and customs.

The petitioner complains that the opposite party subjected her to cruelty, both physically and mentally by various ways. Unable to bear with the torture meted out to her, she had to leave her matrimonial home and started residing at her parental home at Bishnupur, Bankura.

After getting summons, the petitioner came to know that the opposite party brought a matrimonial suit being No.2606 of 2021 against her in the court of learned District Judge, South 24 Parganas at Alipore under section 22 of the Special Marriage Act, 1954 seeking restitution of conjugal rights.

The petitioner alleges that because of torture inflicted upon her, she filed a complaint under section 156(3) CrPC in the court of learned Additional Chief Judicial Magistrate at Bishnupur, Bankura; and by virtue of an order passed by the ACJM, the complaint has been registered as Bishnupur P.S. Case No.182 of 2021 dated November 21, 2021 under sections 498A/420/406/IPC for investigation. The case out of the aforesaid Bishnupur P.S. Case is now pending in the court of learned ACJM, Bishnupur.

The petitioner states that the distance between her parental home and the concerned court at Alipore is about 200 kms. and that she has no income of her own. 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 application remain uncontroverted.

What I find from the uncontroverted averments in the s.24 CPC application and the materials on record, the petitioner under compelling circumstances had to leave her matrimonial home and now she resides at her parental home at Bishnupur. The distance between the place where the petitioner resides and the concerned court at Alipore is about 200 kms. All these demonstrate if the petitioner is to

appear before the court at Alipore, she will face immense 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 of the Code.

In view of the above, the revisional application is allowed by the following order.

Let the matrimonial suit being No.2606 of 2021 be withdrawn from the court of learned District Judge, South 24 Parganas at Alipore, and the suit be transferred to the court of learned Additional District Judge, Bishnupur, Bankukra for disposal.

The learned District Judge, South 24 Parganas at Alipore is directed to transmit the case record of the aforementioned matrimonial suit to the transferee court immediately after receipt of a copy of this order.

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

With the above, CO No.2060 of 2021 stands disposed of. No order as to costs.

[Rabindranath Samanta, J]

