

14.07.2022
Sl. No.7
K.S.

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

C.O. 31 of 2022

Smt. Sandipa Gupta (Bhowmick) @ Sandipa Bhowmick

-Versus-

Sri Suraj Gupta

Mr. Sanjay Mazoomdar

Ms. Sukanya Adhikary

.....For the Petitioner

Mr. Subhasish Mishra

Mr. Swarup Das

.....For the Opposite Party

Party/parties is/are represented in the order of their name/names appearing in the cause title.

Affidavit-in-Opposition filed by the opposite party after service of copy, is taken on record.

Learned advocate for the petitioner/wife preferred this revisional application under Section 24 of the Code of Civil Procedure praying for transfer of Matrimonial Suit No.12 of 2022 pending before the Learned Additional District Judge, Fast Track Court, Coochbehar to any other Court of Additional District Judge at Siliguri.

In short, the case of the petitioner is that her marriage with the respondent/opposite party was solemnized on 11.03.2020 and they stayed together as husband and wife in the house of the opposite party at Coochbehar for 15 days. The opposite party filed the Matrimonial suit under Section 13(1)(ia) of the Hindu Marriage Act, 1955 against the petitioner praying for a decree of divorce as a counter blast of the F.I.R. lodged by her. The Matrimonial Suit being No.12 of 2022 is now pending before Learned Additional District, Fast Track Court, Coochbehar. The petitioner has contended that she is residing

with her mother at Siliguri and has no earning of her own. On the contrary, the husband is employed.

It is further contended that the distance between her residence at Siliguri and Coochbehar Court is about 155 kilometers and it takes five and half hours to travel this distance for her to attend the Court in time. According to the petitioner she is facing hardship due to pendency of the suit at Coochbehar Court, more for the reason that it is expensive for her to bear the cost of travelling.

Further case of the petitioner is that the relationship between the wife and her husband is strained and she feels insecure to travel to Coochbehar Court for the purpose of taking part in the proceedings. She apprehends that the opposite party may physically assault her. On such grounds the petitioner prayed for transfer of the Matrimonial Suit from Coochbehar to any other competent Court at Siliguri.

Learned counsel for the petitioner in support of his submission relied on a decision of the Hon'ble Supreme Court in the case of *Madhu Saxena Vs. Pankaj Saxena; (2005) 13 Supreme Court Cases 158*, wherein the Hon'ble Supreme Court observed that *"The transfer has been sought by the wife on the ground that she has no source of income, she is completely dependent on relatives and she is not in a position to go from Rohtas to Ujjain which involves huge expenses. Even otherwise this court has been showing leniency towards the wife."* Considering all the facts and circumstances of the case Hon'ble Court directed transfer of the Matrimonial Suit from the Family Court of Ujjain to the Court of District Judge, Rohtas at Sasaram.

Learned counsel for the petitioner further placed reliance on another decision of the Hon'ble Supreme Court in the case of

Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi; (2005) 12 Supreme Court Cases 237. Hon'ble Supreme Court in that case found that wife's petition for transfer of matrimonial case from Panvel, Mumbai to Satna (M.P.) on the ground that she was staying there with her brother and neither she nor her brother had financial capacity to contest the petition at Mumbai and held that in such cases convenience of the wife to be preferred over that of the husband.

In reply learned counsel for the opposite party submitted that O.P. is a contractual worker, having work for 26 days with a marginal monthly income and is also suffering from Cardiac ailments which requires immediate surgery. Learned counsel for the opposite party argued that the petitioner has voluntarily left the matrimonial home within 15 days of the marriage and the present suit for divorce has been filed on the ground of cruelty. Regarding transfer of the case it is contended that there is conveyance facility to conveniently travel to Coochbehar and the petitioner has no cogent ground for preferring this revisional application and the same is liable to be dismissed.

In support of his argument learned advocate for the opposite party relied upon a decision of a Coordinate Bench of this Hon'ble Court in the case of *Dipika Agarwal @ Dipika Khaitan Vs. Rishi Agarwal (C.O. No.622 of 2019)*, wherein the application under Section 24 of the Code of Civil Procedure filed by the wife for transfer of the case on the ground of her inconvenience to attend the Court at Alipore was rejected.

Considered the submissions made by learned advocates for both the parties and the facts and circumstances involved herein.

Admittedly, the husband has filed a Matrimonial Suit against the petitioner/wife for divorce on the ground of cruelty. The wife is now residing with her widow mother at Siliguri which is at a distance of more than 100 kilometers from Coochbehar. The husband is having some type of employment but the petitioner is a housewife having no means of earning to bear the financial burden to travel such a long distance from Siliguri to Coochbehar.

Furthermore, travelling at odd hours of the day is a physical hardship for the petitioner and by filing a suit for divorce directly without any attempt to restore the marital relationship, the petitioner/wife cannot be put to such inconvenience.

Having considered the facts and circumstances of the case, it appears to me that the present case can be distinguished from the facts of the case relied on behalf of the opposite party in *Dipika Agarwal @ Dipika Khaitan Vs. Rishi Agarwal* as such the same has no application.

Bearing the convenience and inconvenience factors of the wife in attending the Court at Coochbehar, I am inclined to draw support from the principle of "showing leniency towards the wife", as laid down by the Hon'ble Supreme Court of India in the case of *Madhu Saxena Vs. Pankaj Saxena (supra)*.

In my opinion, it would be appropriate to transfer the Matrimonial Suit No.12 of 2022 from the Court of Learned Additional District Judge, F.T.C., Coochbehar to the Court of Learned District Judge, Darjeeling.

Learned District Judge, Darjeeling shall assign the suit to any competent Court of learned Additional District Judge at Siliguri for its trial and disposal.

Accordingly, the revisional application being, C.O. 31 of 2022 is allowed on contest and is disposed of.

Let a copy of this order be communicated to Learned District Judge, Coochbehar as well as Learned District Judge, Darjeeling for compliance.

Learned District Judge, Coochbehar is directed to forward the record of the Matrimonial Suit No.12 of 2022 to the Court of Learned District Judge, Darjeeling within a period of fortnight from the date of communication of this order.

All parties shall act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Ananda Kumar Mukherjee, J.)