

SUPREME COURT OF INDIA

Rakhi Banerjee

Vs.

Subhankar Mukherjee

Transfer Petition (Civil) No.627 of 2007

(Dalveer Bhandari and Harjit Singh Bedi JJ.)

17.11.2008

ORDER

Dalveer Bhandari, J.

1. This transfer petition has been moved by the petitioner with the prayer that Civil Suit No.527 of 2007 filed by the respondent for damages before the High Court of Judicature at Madras be transferred to the High Court of Calcutta.
2. According to the petitioner, the marriage between the parties took place and was registered on 2nd March 2005. The boubhat ceremony was held on 17th June, 2005 in West Bengal.
3. The respondent had taken the petitioner to Chennai immediately after their marriage. There was serious problem in the marriage between the petitioner and the respondent from the very inception. According to the petitioner, during her stay at Chennai, she was subjected to cruelty and torture.
4. According to the version of the petitioner, the respondent used to utter that the status and educational qualification of the petitioner did not match with the respondent and as such she should bring Rs.5 lakhs from her parents as dowry. The parents of the petitioner on learning about harassment and humiliation had rushed to Chennai on 21.10.2005. According to the petitioner, even her parents were also ill-treated, threatened and abused with filthy languages by the respondent.
5. A male child was born out of this wedlock on 17.11.2005. Even thereafter the respondent severally tortured and assaulted the petitioner both mentally and physically. Ultimately, she left her matrimonial home on 28.08.2006 and came back to her parents' house along with her small child at Burdwan, West Bengal.
6. The respondent filed a suit under section 11 of the Hindu Marriage Act, 1955 before the Family Court at Madras for declaration that the marriage between the petitioner and the

respondent be declared null and void. This case was transferred by this Court to the District Judge, Burdwan, West Bengal by order dated 13.7.2007.

7. The respondent filed an anticipatory bail application before the High Court of Judicature at Bombay being Criminal Application No.393 of 2007 and on consideration of the complaint filed by the petitioner before the Burdwan police station being Crime No.759 of 2006 under sections 498-A/506 (II)/406/120-B/420 IPC, the High Court was pleased to grant conditional bail to the respondent and directed to approach the concerned Court at Burdwan, West Bengal for seeking relief as per law.

8. The respondent filed a Civil Suit No.527 of 2007 before the High Court of Judicature at Madras in which it was prayed that the petitioner be directed to pay a sum of Rs.15 lakhs as damages for causing emotional pain and suffering, loss of companionship, loss of enjoyment of life, and for direct and consequential losses to the respondent.

9. The petitioner has prayed that all other proceedings are pending within the jurisdiction of the High Court of Calcutta. Only this suit bearing no.527 of 2007 is pending in the jurisdiction of High Court of Madras. The petitioner has prayed that this suit may be transferred from the High Court of Madras to the Calcutta High Court because of the following grounds:

“a) The petitioner is having a small child and it is extremely difficult for her to travel with a small child to attend the case at Chennai;

b) The petitioner has no source of income and she is staying with her retired parents;

c) All cases between the parties are pending within the jurisdiction of High Court of Calcutta where the respondent is otherwise attending those cases at Kolkata;

d) The respondent has now been transferred to Mumbai. As far as the respondent is concerned, it hardly matters for him whether he travels to Chennai or Kolkata to attend the case whereas it is extremely difficult for the petitioner to travel to Chennai to attend the case particularly when she is totally unemployed and dependant on her retired parents.”

10. A comprehensive counter affidavit has been filed by the respondent. In the counter affidavit, the allegations leveled against the respondent have been denied but the factum of their marriage and child born out of the wedlock is admitted. It is also not disputed that the petitioner is residing in Kolkata with parents. It is also not denied that the four cases between the parties are pending within the jurisdiction of High Court of Calcutta. It is further not denied that the respondent has now been transferred to Mumbai and he is attending other cases filed against him in Kolkata.

11. At this stage, we would not like to examine the veracity of the allegations leveled by the parties against each other.

12. We have heard the learned counsel for the parties. The admitted facts are that the petitioner is unemployed and has a small child and living with her retired parents. Four other cases are already pending within the jurisdiction of the Calcutta High Court. The respondent has now been transferred from Chennai to Mumbai.

13. On consideration of the totality of the facts and circumstances and in the interest of justice, we deem it appropriate to transfer Civil Suit No.527 of 2007 titled as `Subhankar Mukherjee v. Rakhi Banerjee' pending in the High Court of Madras to the High Court of Calcutta. We order accordingly.

14. The transfer petition is accordingly allowed and disposed of.