

S/L. 5.
20.08.2019
MNS

**Calcutta High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction**

C. O. No. 25 of 2019

**Smt. Piyali Barman nee Roy
-Vs.-
Shri Debendra Nath Barman**

Mr. Arnab Sengupta,
Mr. Rajesh Kumar Sharma,
Mr. S. Saha,
Ms. D. Dhar

...for the petitioner.

Mr. Hillol Saha Poddar

...for the opposite party.

The respondent-wife in a suit for restitution of conjugal rights has preferred the instant application under Section 24 of the Code of Civil Procedure for transfer of the husband's aforesaid suit from the court of the Additional District Judge at Mathabhanga, Cooch Behar, to any court having determination at Siliguri.

Learned counsel for the petitioner argues that the distance between the place of residence of the wife, that is, Matigara, to Siliguri is about 130 kilometers. Since the

wife is financially weak and is not well-educated, it is difficult for her to conduct the litigation upon coming regularly to a distant place and in engaging and dealing with advocates there.

On the other hand, it is submitted, it would be much easier for her to contest the suit, if she had to come about eight kilometers down to Siliguri, where she could be accompanied by her parents.

Learned counsel for the opposite party-husband submits that the opposite party is undergoing dialysis and is not fit enough to attend the Siliguri Court regularly from his residence at Mathabhanga.

It is further submitted that, since the husband is already having to attend a proceeding under the domestic violence act initiated by the wife at Siliguri, which would be appearing before a different forum than the civil case, it would be all the more difficult for the husband to obtain so many leaves from his school, where he is engaged as a teacher, to attend the two different

proceedings at Siliguri before different fora and on different dates.

Upon hearing both sides, it appears that the balance of convenience and inconvenience is evenly poised between the parties. The predicament of the wife, being not-so-educated and it being difficult for her to travel up and down 130 kilometers each side, counteracts the difficulty of the husband to leave his job for two separate proceedings to attend courts at Siliguri, particularly in view of the ailment of the husband.

In such view of the matter, it would be proper for the ends of justice that the matter be transferred somewhere in-between Mathabhanga and Siliguri.

Learned counsel for the parties agree that Jalpaiguri would be somewhere midway between the two places, where conveyance would also be easier.

Accordingly, C. O. No 25 of 2019 is disposed of by directing that the records of Matrimonial Suit No. 23 of 2019, pending at present before the Additional District Judge

at Mathabhanga, District- Cooch Behar, be transferred to the Court of the District Judge at Jalpaiguri, at the earliest.

It will be open to the District Judge at Jalpaiguri to take up the suit for hearing himself or to relegate it to some Additional District Judge having power to take matrimonial matters within the precincts of the Jalpaiguri Court.

This order shall be communicated to the court of the Additional District Judge at Mathabhanga, District- Cooch Behar, as well as to the District Court at Jalpaiguri through the registry of this circuit bench.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)