

21.12.2020

Mithun

List – D/L

Sl. No. 12

Ct. No. 09

CO/641/2019

Samapti Burman

-Vs.-

Debjit Burman

Mr. Apurba Kumar Dutta, Adv;
Mr. Kuntal Banerjee, Adv.

... for the Petitioner.

This is an application under Section 24 of the Code of Civil Procedure filed by the wife/petitioner against her husband, opposite party herein praying for transfer of Matrimonial Suit No.345 of 2018 pending before the learned District Judge, Hooghly at Chinsurah, to the Court of competent jurisdiction at Asansol, Paschim Bardhaman.

At the outset it is important to mention that as per direction of this Court notice was duly served upon the opposite party but he prefers to remain absent in spite of service of notice. Affidavit-of-service be kept with the record.

By filing the instant application it is stated by the petitioner that her marriage was solemnized according to the Hindu Rites and Customs on 12th December, 2007. Out of the said wedlock, she gave birth to a female child who is aged about 7 years. The petitioner was driven out from her matrimonial home and she has been presently residing at her paternal home at Asansol with her minor daughter. It is also stated by the petitioner that since she has no source of income, she was compelled to file an

application under Section 125 of the Code of Criminal Procedure praying for maintenance which is pending before the learned Judicial Magistrate, 6th Court at Asansol. She also filed a criminal case against the opposite party under Section 420/406 of the Indian Penal Code which is pending before the learned Additional Chief Judicial Magistrate, Asansol.

It is submitted by the petitioner that she has no source of income and she will suffer tremendous financial hardship if she is compelled to contest the matrimonial suit at Chinsurah making a journey of about 200 Kms in one way.

Having heard the learned Advocate for the petitioner and on perusal of the materials on record it is ascertained that the petitioner has no source of income. The opposite party has not even paid any maintenance to the petitioner. In respect of an application under Section 24 of the Code of Civil Procedure arising out of a matrimonial suit, the convenience of the wife is the paramount consideration. In support of my observations, the following decisions of the Hon'ble Supreme Court in ***Rajani Kishore Pardeshi Vs. Kishor Babulal Pardesh*** reported in ***(2004) 12 SCC 237*** and ***Tejalben Vs. Mihirbhai Bharatbhai Kothari*** reported in ***(2016) 3 SCC 69*** may be relied on.

It is not only the convenience of the petitioner but also mental stress of her minor daughter aged about 7 years which should also be looked into as a ground for transferring the case from Chinsurah to Asansol.

In view of the above discussion, the instant application is allowed.

Let Matrimonial Suit No.345 of 2018 pending before the learned District Judge, Hooghly at Chinsurah be transferred to the Court of the learned District Judge, Paschim Bardhaman at Asansol for trial and disposal.

Department is directed to send copies of the instant order to both the Courts below for information and necessary action.

Parties are also at liberty to act on the server copy of the order passed by this Court.

(Bibek Chaudhuri, J.)