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14.01.2021
S.D.

C.O. 335 of 2020
With
CAN 1 of 2020 (Old CAN No. 2915 of 2020)
CAN 2 of 2020 (Old CAN No. 5049 of 2020)
CAN 3 of 2020 (Old CAN No. 5050 of 2020)

Swarup Kumar Sikdar
Vs.
Sayani Sikder (Majumder)

Mr. Prantick Ghosh
Mr. Siddhartha Sarkar
Mr. Hirak Roy

....For the petitioner.

Mr. Kamalesh Chandra Saha
Ms. Payel Mitra

...for the opposite party.

The application under Section 24 of the Code of Civil Procedure is taken up for consideration for hearing.

The petitioner's case is that out of their wedlock, a male child was born who is now aged five years.

After the birth of the child, there developed a souring relationship between the spouse, as a result they started living separately. The petitioner/husband is residing at Barrackpore, District – North 24 Parganas where he had filed a Matrimonial Suit being MAT No. 616 of 2018 for restitution of conjugal right under the provision of Section 22 of Special Marriage Act, 1954

which was pending in the Court of Additional District Judge, Fast Track Court, III, Barrackpore.

The opposite party/wife is residing in Durgapur in the district of Burdwan where she filed a Miscellaneous Proceeding under Section 125 Cr.P.C. and a criminal case alleging charge under Section 498A of the IPC against the petitioner/husband which cases are pending before the Court of Judicial Magistrate, Durgapur.

Feeling inconvenient in attending Court at Barrackpore, the opposite party/wife filed a revisional application being C.O. 2430 of 2018 for the transfer of the said case to the Court of Additional District Judge, Durgapur, District-Burdwan. The said revisional application has been decided and allowed vide order dated 4.11.2019 by transferring of the Matrimonial Suit being 616 of 2018 pending in the Court of Barrackpore to the Court of learned District Judge, Burdwan in the District of Purba Burdwan.

It is pointed out by the learned Advocate for the petitioner that after considering the submissions of the parties and the averments in the application and having regard to the guiding principle of transfer of the cases as laid down by the Hon'ble Supreme Court, the Coordinate Bench of this Hon'ble Court ascertained the facts enumerated hereunder:-

"1. The petitioner has been staying at Durgapur.

2. The marital relationship between the parties is suffered from distrust and discord.
3. At last two criminal proceedings between the parties are pending at Durgapur.
4. The matrimonial suit for restitution of conjugal rights filed by the opposite party is pending at Barrackpore wherein the petitioner had entered appearance and filed an application under Section 36 of the Special Marriage Act praying for alimony pendente lite and the said proceeding is still pending before the learned Court of trial.
5. In the wedlock between the parties the petitioner gave birth to a male child in the month of June, 2015. He is now aged about four years and is a student of a school at Durgapur.
6. Last but not the least the petitioner has been working as HR Executive in a private hospital at Durgapur.”

The inconvenience of the opposite party was taken into consideration while considering the transfer of the matrimonial suit to the Court of District Judge, Purba Burdwan. The order also reflects that the opposite party/wife had initiated a case under Section 498A of the IPC and also a Misc. case under Section

125 of the Cr.P.C. pending in the Court of Judicial Magistrate, Durgapur and despite this fact and having knowledge so addressed to the Hon'ble Bench to this Court, it is submitted on behalf of the petitioner that the learned Revisional Court directed the Matrimonial Suit to be transferred to the Court of Purba Burdwan and accordingly, the petitioner/husband submits that the case being (Act VIII) Case No. 57 of 2018 (48 of 2019) now pending in the Court of District Judge, Asansol, Paschim Burdwan be transferred to the Court of learned District Judge, Purba Burdwan at Burdwan Sadar.

Miscellaneous Case being Act VIII of 2018 has been transferred to the Court of learned District Judge, Paschim Burdwan at Asansol for disposal after bifurcation of judgeship of Burdwan and after creation of new district, namely Paschim Burdwan, under which Durgapur falls within the district of Paschim Burdwan by an order of transfer is vide order dated 17.7.2019. The order sheet of the proceeding being Act VIII 48/19 reveals that the last date fixed was on 21.8.19 for appearance of the parties after the receipt of the record by way of transfer from the learned District Judge, Purba Burdwan for disposal.

The petitioner has sought for transfer of the case being Act VIII 48/19 to the Court of District Judge, Burdwan on the grounds inter alia:-

- (a) At present Matrimonial Suit No. 616 of 2018 for decree of restitution of conjugal right filed by the petitioner has been transferred from the Court of Learned Additional District Judge, Barrackpore to the Court of Learned District Judge, Burdwan by a solemn order dated 04.11.2019 passed by the Hon'ble High Court at Calcutta in C.O. No. 2430 of 2018.
- (b) It appears on the face of record that the opposite party also wants transfer of said case from the Court of Learned District Judge at Asansol to the Court of Learned District Judge at Durgapur.
- (c) That both the parties are facing inconvenient to prosecute the present case at Asansol.
- (d) The petitioner has been facing great inconvenience to conduct his case at Asansol from his residence at Barrackpore.
- (e) Considering the relevant inconvenience of the present petitioner the present case should be transferred.
- (f) The opposite party is working lady presently she is working as HR Executive of Vivekananda Hospital, Durgapur and it is not difficult for herself to attend the Court at Burdwan.

- (g) The petitioner is working in private firm at New Town. The petitioner resides at Barrackpore. He has to travel 250 km. On each way to reach at Asansol. If the case is transferred at Burdwan, the petitioner has to travel 110 km. On each way. On the other hand, if the case is transferred to Burdwan, the opposite party has to travel 80 km. From her father's house."

I have considered the submissions made on behalf of the learned Advocates for the parties. It is submitted in rebuttal by the learned Advocate for the opposite party/wife that admittedly the male child aged about 5 years at present is putting up with his mother at Durgapur.

In view of provisions of sub Section 1 of Section 9 of the Guardians & Wards Act, 1890, an application for custody of a minor is entertainable in the District Court having jurisdiction in the place where the minor ordinarily resides. The male child is admittedly living with his mother in Durgapur. Therefore, Durgapur Court has the jurisdiction to entertain such an application. For the convenience of both the parties and for reason that opposite party wife is a working lady employed as HR Executive of Vivekananda Hospital at Durgapur, it would be difficult for her to attend the Court at Burdwan or Asansol, the application under Section 24 of the Code of Civil Procedure is

considered and is allowed with a direction that the Miscellaneous (Act VIII) Case No. 57 of 2018 (48 of 2019) titled (Swarup Kumar Sikdar vs. Sayani Sikdar) is withdrawn from file of the learned District Judge, Asansol, Paschim Burdwan and is transferred to the Court of learned Additional District Judge, Durgapur for disposal.

Thus, application being C.O. 335 of 2020 is disposed of.

No order as to costs.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of the usual formalities.

(Shivakant Prasad, J.)