

04.01.2021

Mithun

List – D/L

Sl. No. 01

Ct. No. 09

CO/2833/2019

Smt.Sanghamitra Roy

-Vs.-

Sandip Chatterjee

Mr. Uday Sankar Chattopadhyay, Adv
Mr. Sumon Sankar Chatterjee, Adv,
Mr. Snigdha Saha, Adv.

... for the Petitioner

This is an application under Section 24 of the Code of Civil Procedure filed by the wife/petitioner praying for transfer of Matrimonial Suit No.22 of 2019 filed by her husband/opposite party herein before the learned District Judge, Suri, Birbhum.

The petitioner has prayed for transferring the said suit which is now pending in the 4th Court of the learned Additional District & Sessions Judge at Suri to the Court of the learned District Judge, Burdwan on the ground that she has been residing at Burdwan at her paternal home following matrimonial discord. Secondly, she is having a minor child aged about 5 years if she is compelled to contest the suit at Suri she will have to leave her minor daughter under the care of her old parents. It is also the case of the petitioner that she has been suffering from various ailments and the doctor advised her to avoid heavy work and long journey.

It appears from the affidavit-of-service that as per order dated 6th February, 2020, this Court directed the learned Advocate for the petitioner to serve notice upon the opposite party through his learned Advocate in the Trial Court. The notice was duly received by the learned Advocate for the opposite party in the Trial Court. In

spite of service of such notice, the opposite party has not turned up. Considering such circumstances, the petition is taken up for hearing ex parte.

Affidavit-of-service be kept with the record.

It is submitted on behalf of the petitioner that the petitioner is now residing at Burdwan. The residential house of the opposite party is also in the District of Burdwan. Distance between the residence of the opposite party and Purba Burdwaman District Judge's Court is about 37 Kms. On the other hand, both the petitioner and the opposite party will have to travel a long distance if the suit is tried by the Court in the District of Birbhum where the same is presently pending.

Having due regard to the submission made by the learned Advocate for the petitioner and on careful perusal of the application under Section 24 of the Code of Civil Procedure, it is ascertained that the petitioner has been working for gain at Murarai in the district of Birbhum. The respondent in his application under Section 27 of the Special Marriage Act stated that he is also working for gain at Labhpur in the District of Birbhum and both of them lastly resided together at Ahmedpur in the district of Birbhum. With such averment, jurisdiction of the Court of the learned District Judge at Birbhum is attempted to be established.

Needless to mention that a Matrimonial Suit may be instituted at a place where the marriage was solemnized or where the parties resided together lastly or where the respondent/wife resides at the time of institution of the suit.

The petitioner on affidavit has stated that she has been residing at Burdwan at her paternal home. Both the petitioner and the respondent are permanent

resident in the district of Burdwan and it is presumed that their marriage was solemnized at Burdwan. Therefore, the learned District Judge, Burdwan has also the jurisdiction to try the suit. Since the petitioner has been residing at Burdwan and the opposite party is also resided in the District of Burdwan at a distance of about 37 Kms away from the Court premises, I am of the view that both parties will not suffer rather they will be able to conduct their cases conveniently in the Court of the learned District Judge, Burdwan. In view of what has been stated above, the instant application is allowed ex parte, however, without costs.

Matrimonial Suit No.22 of 2019 pending before the learned Additional District & Sessions Judge, 4th Court, Suri, Birbhum be transferred to the Court of the learned District Judge, Burdwan for trial and disposal.

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

The parties are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)