

13.
29.01.2021
S.D.

C.O. 1578 of 2020

Smt. Shelly Chakraborty
Vs.
Dr. Arnab Chakraborty

Mr. Bikram Banerjee

...For the petitioner.

Mr. Arindam Sen

Mr. Saurav Basu

...For the O.P.

Affidavit of service filed in Court be kept on record. In response to the notice, Mr. Arindam Sen has entered appearance and has filed affidavit-in-opposition which is placed on record.

Now, on consent of both the parties, the application under Section 24 of the Civil Procedure Code, 1908 is taken up for hearing and consideration.

Heard learned Advocate for both the parties.

In this application, the petitioner/wife has sought for transfer of Act VIII Case No. 34 of 2020 filed under Section 24 and 25 of the Guardian and Wards Act, 1890 now pending in the Court of learned District and Sessions Judge, Purba Burdwan to the learned Chief Judge, City Civil Court,

Calcutta. The contentions raised in the application is that due to the souring relationship between the petitioner and the husband as she was subjected to physical and mental torture by the respondent, she filed a complaint under Section 498A/406/43 of the IPC and Section 3/4 of the Dowry Prohibition Act before the Jorabagan Police Station being Section B, C/No. 115 dated 17.7.2020 and also filed an application for maintenance case under Protection of Women from Domestic Violence Act, 2005.

To take revenge, the opposite party has been filed the application under Section 24 and 25 of the Guardians and Wards Act, 1890 being Act VIII Case No. 34 of 2020 praying for appointment of legal guardian and to get the physical custody of the female child, namely Samriddha Chakraborty from the petitioner/wife/mother on a baseless, concocted and frivolous allegation. It is pointed out that the allegation made in the application in Act VIII Case No. 34 of 2020 is absolutely false, frivolous and concocted pending in the Court of District and Sessions Judge, Purba Burdwan and the place is at a distance of about 200 kms. (to and fro) and the petitioner/wife has to spend more than six hours for attending the District and Sessions Court, Purba Burdwan and it is difficult for her to take her female child to attend the Court at Burdwan. It is

also pointed out that the daughter is in proper care of the petitioner who needs basic amenities for her growth. It is submitted by the petitioner/wife that her daughter has been admitted by her to Lower KG. in Rajasthan Vidyamandir Junior School at 36, Baranashi Ghosh Street, Kolkata – 700007 which is within the jurisdiction of Presidency Township. It is also submitted that the petitioner/wife has no place of residence in Purba Burdwan whereas the opposite party has his residence in Jadavpur and Kestopur at Kolkata and if the Act VIII case no. 34 of 2020 pending before the Court of learned District Judge, Purba Burdwan is transferred to the Court of learned Chief Judge, City Civil Court, Calcutta, then the petitioner as well as the opposite party would not suffer any loss or injury. By filing the affidavit-in-opposition, the allegation made by the petitioner/wife has been categorically denied and disputed by the opposite party/husband and it is submitted that in 2015-16, the opposite party was compelled by the petitioner/wife to arrange a rented accommodation at Kestopur and stayed for a very short period of time and thereafter handed over possession to the landlord and at present the flat at 71, Garfa Fourth Lane, Kolkata – 700075, which belongs to the father of the opposite party is under occupation of his uncle where he

is residing with his family and the said flat being a very small one, hardly there is any scope for the opposite party to stay over there even for a night. It is submitted that the application is not maintainable on the ground as stated in the application by the petitioner and has objected to the transfer of the case to City Civil Court. However, in the midst of submission, it is submitted on behalf of the opposite party that if the case is transferred that can be transferred to the Court of Sealdah as the Sealdah Court is more nearer to the residence of the petitioner/wife.

I have heard learned Advocate for both the parties and perused the rival contentions made in the application and also the affidavit-in-opposition. The opposite party/husband has filed the Act VIII Case No. 34 of 2020 in the Court of District Judge, Purba Burdwan for the purpose of getting the custody of the minor daughter. It is pointed out that the daughter is only 4 years of age. Bearing in mind the age of the daughter and the fact that she is a student of Lower KG class and further in consideration of the provision of subsection 1 of Section 9 of the Guardian and Wards Act, 1890 providing that if the application is with respect to the guardianship of the person of the minor, it shall be made to

the Court having jurisdiction in the place where the minor ordinarily resides.

In the given case, the minor is residing in the Presidency Town of Calcutta within the jurisdiction of Chief Judge, City Civil Court, Calcutta. Therefore, the Court is of the view that the Act VIII Case No. 34 of 2020 under Section 24 and 25 of the Guardian Ship and Wards Act, 1890 pending in the Court of learned District Judge, Purba Burdwan be transferred to the file of learned Chief Judge, City Civil Court, Calcutta.

Accordingly, the application under Section 24 of the Civil Procedure Code is allowed.

The District Judge, Purba Burdwan is directed to transfer the aforementioned case pending before him to the file of Court of Chief Judge, City Civil Court, Calcutta instantly on receipt of this order. The learned Chief Judge is directed to proceed to hear out the application under Act VIII as expeditiously as possible preferably within six months from the date of receipt of the case record.

Let a copy of this order be communicated to the District Judge, Purba Burdwan and also to the learned Chief Judge, City Civil Court, Calcutta for necessary action in the matter.

Thus, application being C.O. 1578 of 2020 is allowed and disposed of, however, without any order as to cost.

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

(Shivakant Prasad, J.)