

Ct. 06.6
No. 2022
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C.O. 27 of 2022
Sayani Mukherjee alias Bhattacharjee
-Versus-
Kundal Mukherjee

Mr. Rwitendra Banerjee
Mr. Shibasis Chatterjee

...For the Petitioner

Affidavit-of-service filed by the petitioner in Court today be kept on record.

It appears that despite service of notice upon him, there is no representation on the part of the opposite party.

This is an application under Section 24 of the Code of Civil Procedure filed by the wife/petitioner seeking transfer of Matrimonial Suit from a Court at Barasat, North 24-Parganas to the Court of the learned District Judge, Murshidabad.

It is stated by the petitioner Sayani Mukherjee alias Bhattacharjee that her marriage with the opposite party Kuntal Mukherjee was registered under the provisions of the Special Marriage Act, 1954.

After her marriage she was started residing with her husband and their marriage was duly consummated.

In the beginning of October 2021 the petitioner started residing with her husband in a rented accommodation at Sadikhandearh, District – Murshidabad. But soon thereafter, she was subjected to torture both physically and mentally by her husband.

Under a compelling circumstances, the petitioner had to leave her matrimonial home and started residing at her parental home.

On the torture meted to her, the petitioner lodged a first information report (FIR) at Jalangi Police Station against the opposite party and the FIR was registered as

Jalangi Police Station Case No. 360 of 2021 dated December 23, 2021 under Section 498A/34 of the Indian Penal Code.

In order to sustain her livelihood the petitioner filed an application under Section 125 of the Code of Criminal Procedure in the Court of the learned Chief Judicial Magistrate, Murshidabad at Berhampore seeking maintenance allowance from the opposite party.

Though the petitioner and the opposite party last resided within the jurisdiction of the Murshidabad District, the opposite party in order to harass the petitioner, filed a matrimonial suit being Mat. Suit No. 263 of 2021 in the Court of the learned District Judge, North 24-Parganas at Barasat for restitution of conjugal rights under Section 22 of the Special Marriage Act, 1954. The said suit filed in the Court of learned District Judge has been transferred to the learned Additional District Judge, Fast Track Court No. II for disposal.

The petitioner submits that all the cases brought by her are pending in the concerned Courts under the Judgeship of Murshidabad. The opposite party has brought the matrimonial suit without any justification and in order to wreak vengeance upon the opposite party. The petitioner submits that to attend the Court at Barasat she will have to travel 171 kms. from her parental him.

Learned Lawyer appearing for the petitioner submits that the opposite party in the application for restitution of conjugal rights has stated at paragraph 12 that the petitioner on October 27, 2021 left the office quarter of the opposite party. In this context, learned Lawyer by referring to Section 31 of the Special Marriage Act submits that as the facts narrated in the application for restitution of

conjugal rights suggest, the application filed by the opposite party ought to have been filed in the Court under the Judgeship of Murshidabad.

I feel that it will be apposite to refer Section 31 of the Special Marriage Act, 1954 which runs as under :-

“31. Court to which petition should be made.—(1) Every petition under Chapter V or Chapter VI shall be presented to the district Court within the local limits of whose original civil jurisdiction –

(i) the marriage was solemnized; or

(ii) the respondent, at the time of the presentation of the petition, resides; or

(iii) the parties to the marriage last resided together; or

[(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or]

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive.]”

Be that as it may, the fact remains that the averments as made in the application remain uncontroverted due to non-representation of the opposite party despite service of notice upon him.

Having considered the uncontroverted facts and circumstances as stated in the application and in exercise of power under Section 24 of the Code of Civil Procedure I feel that it will be conducive to the interest of justice if the aforesaid matrimonial suit is transferred to the Court of the learned District Judge, Murshidabad.

In view of the above, this application is allowed.

Let the Matrimonial Suit being Mat. Suit No. 263 of 2021 pending in the Court of the learned Additional District Judge, Fast Track Court-II, Barasat, North 24-Parganas be withdrawn and transferred to the Court of the learned District Judge, Murshidabad at Berhampore.

The learned Additional District Judge, Fast Track Court-II, Barasat, North 24-Parganas is directed to transmit the case record of the aforesaid matrimonial suit to the learned transferee Court forthwith after receipt of the copy of this order.

The learned District Judge, Murshidabad at Berhampore shall make all endeavour to dispose of the Matrimonial Suit either himself or by any Additional District Judge as expeditiously as possible.

With the aforesaid direction application under Section 24 of the Code of Civil Procedure is disposed of.

Interim order, if there be any, stands vacated.

There will, however, be no order as to costs.

Let a copy of this order be communicated to both the Courts below for information and compliance.

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis upon compliance of all formalities.

(Rabindranath Samanta, J.)