

28.03.2022
Ct. 21
D/L 7

C.O. 363 of 2022
(Via Video Conference)

Asha Mitra (Sarkar)
-Vs-
Kapil Mitra.

Mr. Masum Ali Sardar,
... for the petitioner

Mr. Amal Kumar Mukhopadhyay

Mr. Prabreet De
..... for the opposite party.

The petitioner files affidavit of service along with postal receipt and track report showing due service.

Parties are represented by their respective counsels.

The application under Section 24 of C.P.C. is taken up for hearing.

Heard learned counsels for both sides.

The petitioner Asha Mitra has filed the present application under Section 24 of C.P.C for transfer of Matrimonial Suit no.788 of 2019 under Section 27(1)(d) of the Special Marriage Act, filed by Kapil Mitra/ husband opposite party for dissolution of their marriage which took place on 4.6.2010 from the Court of Additional District Judge, Baruipur, South 24 Parganas

to the Court of Additional District and Session Judge, Siliguri, Darjeeling.

That marriage between the parties took place under Special Marriage Act, on 04.06.2010 and later there was social marriage on 11.12.2011 at Siliguri.

After marriage parties started living as husband and wife at Jalpaiguri, where the opposite party was working at Jalpaiguri Sadar Hospital as Para Medical Worker. Parties were blessed with a son on 08.10.2013.

That opposite party was transferred from Jalpaiguri to Kolkata and as such they shifted to Kolkata and started residing in the house of opposite party at Baruipur sometime in the year 2016.

It has been alleged that after shifting to Baruipur petitioner was subjected to both mental and physical torture in the hands of her mother-in-law and as such she had to lodge an FIR against her. To save the life of herself and that of the child she had to escape from her matrimonial home on 30.09.2017 and since then she along with the child have been residing at her parents' house at Siliguri. The child who is now aged about 9 years is studying in a Nursery school in Siliguri.

In the application under consideration the petitioner has alleged that it would not be possible on her part to come regularly to attend the Court at Baruipur, for hearing of the Divorce Suit as the child would be neglected during her absence as he is

studying in Siliguri and there is none to take care of the child except her as her parents are aged and ailing. The distance between Siliguri and Baruipur is about 600 km.

She has also alleged that she has filed complaint case being C.R. Case No. 1180 of 2017 under Section 406/506 and 120B IPC, Maintenance Case under Section 125 Cr.P.C. and another application under Section 12, 18, 19 and 22 of Protection of Woman from Domestic Violence Act, 2015 against the opposite party and all those cases are pending before the ACJM of Siliguri. She has also expressed her apprehension that her life may be in danger if she ever has to come to Baruipur Court. Therefore, she prays the Matrimonial Suit be transferred to the Siliguri Court from the Court of Baruipur.

On the other hand learned Counsel for the opposite party vehemently raised objection and stated that merely on the ground of apprehension of danger to the life of the petitioner, the case cannot be transferred. Thus, he prays for rejection of the case under Section 24 of the CPC.

Having considered the submission made by learned Counsel for the parties it appears the ground set out for transfer is long distance, other pending cases against the opposite party in Siliguri Court and the

difficulties that would be faced by the child in the absence of mother from home.

It has come on record at present the petitioner wife and minor son of the parties aged about 9 years are residing at Siliguri, Darjeeling in the paternal house of the petitioner. The child is studying in Modella Nursery School Siliguri. It is a matter of common knowledge the distance between Siliguri and Kolkata is more than 550 Kilometers and it will take more than 12 hours by train or by bus and it would be financial constraint on the part of wife who is alleged to be an unemployed lady.

Considering such facts, the Matrimonial Suit No. 788 of 2019 is hereby withdrawn from the Court of learned Additional District Judge Baruipur and transferred to the Court of Additional District Judge, Siliguri.

Additional District Judge Baruipur is requested to transfer the Matrimonial Suit No. 788 of 2019 pending in his/her Court within a month from the date of communication of this order. The transferee Court shall proceed to dispose of the said suit from the stage at which it has already reached.

The parties shall appear before the learned Additional District Judge, Siliguri on 30th April, 2022 irrespective of transfer of the records of the said matrimonial suit but only on the basis of the server copy of this order. The learned Additional District

Judge, Siliguri shall act on such communication and shall expedite the disposal of the suit in accordance with the law.

Accordingly **C.O. 363 of 2022 is disposed of.**

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

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

(**Kesang Doma Bhutia, J.**)