

Ct. 06.6
No. 2022
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C.O. 524 of 2020
Saroj Kumari Shah @ Saroj Kumari Shaw
-Versus-
Raj Narayan Shaw

Mr. Anit Dey

...For the Petitioner

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

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

It is stated by the petitioner Saroj Kumari Shah @ Saroj Kumari Shaw that her marriage with the opposite party Raj Narayan Shaw was solemnized on June 11, 2010 according to Special Marriage Act, 1954. Soon after her marriage with the opposite party, she was subjected to cruelty both physically and mentally. Under such circumstance, she filed a complaint in the Court of learned Additional Chief Judicial Magistrate, Barrackpore, under Sections 498A/406/506/323/324/325/34 of the Indian Penal Code against the opposite party and his family members. The complaint filed by her has been registered as C. Case No. 123 of 2016. Besides, the petitioner filed an application under Section 125 of the Code of Criminal Procedure seeking maintenance allowance for herself. After hearing the parties, the learned Magistrate finally disposed of the maintenance case on contest. The petitioner has filed an execution case, being Mex. Case No. 42 of 2017 to get an order of maintenance allowance executed and the same is

pending in the Court of learned Judicial Magistrate, 5th Court, Barrackpore, North 24-Parganas. After the petitioner filed the aforesaid complaint and the maintenance Case, the opposite party filed an application under Section 27(1)(b)(d) of the Special Marriage Act for dissolution of marriage between them in the Court of the learned District Judge, Hooghly at Chinsurah and the application was registered as Matrimonial Suit No. 270 of 2019. The petitioner, after receiving the summons, entered appearance to contest the matrimonial suit.

Be it noted that prior to filing the aforesaid suit for dissolution of marriage, the opposite party filed a matrimonial suit being Mat. Suit No. 173 of 2017 in the Court of the learned District Judge, Hooghly at Chinsurah for restitution of conjugal rights under Section 22 of the Special Marriage Act, 1954. But the said suit filed by him was dismissed for non-appearance of him.

The learned Lawyer appearing for the petitioner submits that to reach to the Court at Chinsurah, the petitioner will have to leave her house at 8.30 a.m. and cross over the river at Chinsurah. As all the matters as above are pending in the Barrackpore Court, it will be convenient for the petitioner if the matrimonial suit is transferred to the Court at Barrackpore.

I find that despite service of notice, the opposite party remains unrepresented before this Court. As it appears from the pleading as well as from the documents on record, a Criminal case under Section 498A/406/506/323/324/325/34 as well as an application under Section 125 of the Code of Criminal Procedure are pending in the Court of a Judicial

Magistrate at Barrackpore, under whose jurisdiction the petitioner now ordinarily resides.

As the opposite party has not preferred to contest the instant proceeding, the averments of the application now remain uncontroverted. Under such circumstance, this Court cannot rule out the hardship to be faced by the petitioner to attend the Court at Chinsurah from her residence under Barrackpore Sub-Division.

The relevant portion of Section 24 of the Code of Civil Procedure is delineated as under :-

“General power of transfer and withdrawal.—(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage—

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or***
- (a) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and***
 - (i) try or dispose of the same; or***
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or***
 - (ii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.”***

Having considered the uncontroverted facts and circumstances as narrated above and in exercise of power under Section 24 of the Code of Civil Procedure, this Court feels that the aforesaid matrimonial suit should be

transferred to the Court at Barrackpore from the Court of the District Judge, Hooghly at Chinsurah.

Accordingly, the application is allowed.

Let the Matrimonial Suit No. 270 of 2019 under Section 27(1)(b)(d) of the Special Marriage Act pending in the Court of learned District Judge, Hooghly at Chinsurah be withdrawn and transferred to the Court of the learned Additional District Judge, First Court, Barrackpore, North 24-Parganas for disposal.

The learned District Judge, Hooghly is requested to transmit the case record to the aforesaid transferee Court forthwith after receipt of the copy of this order.

The transferee Court is requested to dispose of the matrimonial suit as expeditiously as possible.

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

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.)