

Ct. 08.6
No. 2022
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C.O. 903 of 2022

Smt. Priyanka Dey

-Versus-

Avijit Kumar Dey

Mr. Uday Sankar Chattopadhyay

Mr. Santanu Maji

Mr. S. Das

...For the Petitioner

Mr. Souradeep Banerjee

Mr. S.K. Banerjee

...For the Opposite Party

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

The opposite party Avijit Kumar Dey is represented by his learned Lawyer.

This revision arises out of an application under Section 24 of the Code of Civil Procedure seeking transfer of a Matrimonial Suit from a Court of the learned District Judge, Purba Bardhaman to the Court of the learned Additional District Judge, Amta, Howrah.

The petitioner states that her marriage with the opposite party, Avijit Kumar Dey was solemnized on December 13, 2013 in accordance with the Hindu rites and customs. Out of her wedlock with the opposite party she gave birth to a male child namely, Arka Dey on January 01, 2016. The child of the petitioner is a school going boy. Sometime after the marriage and after she gave birth to her child, the opposite party and his family members inflicted torture on her physically and mentally and ultimately she was turned out of her matrimonial home on October 11, 2020. Having no other alternative she is presently residing at her parental home. Hoping that the matrimonial discord between them could be resolved amicably the petitioner did not launch any criminal case against the opposite party on the allegations of torture on her.

However, as the petitioner has no source of income, she, in order to sustain the livelihood her child and herself has filed an application under Section 125 of the Criminal Procedure Code registered as Misc. Case No. 40 of 2020 in the Court of the learned Judicial Magistrate, 1st Court, Amta, Howrah against the opposite party seeking maintenance allowance.

After receiving summons, the petitioner came to know that the opposite party has filed a matrimonial suit under Section 9 of the Hindu Marriage Act praying for restitution of conjugal rights in the Court of the learned District Judge, Purba Bardhaman.

The distance between the parental home of the petitioner and the Court at Purba Bardhaman is nearly 95 kms. Owing to her financial distress and her parents being aged and ailing persons, it will be hardship for the petitioner to travel the aforesaid distance to attend the matrimonial proceeding before the Court of the learned District Judge at Burdwan.

It may be noted that the husband of the petitioner is a teacher and he is presently posted at Bhadrakali High School, Uttarpara, District – Hooghly.

Under such circumstance, the petitioner seeks that of the aforesaid matrimonial suit be withdrawn and transferred to the concerned Court at Amta, Howrah.

Though the opposite party has not filed any affidavit-in-opposition, learned Counsel appearing for the opposite party submits that the opposite party denies the averments as made in the application.

Learned Counsel appearing for the petitioner submits that the maintenance proceeding brought by the petitioner is pending before a Court of Judicial Magistrate, Amta, Howrah and the opposite party has to come to Amta to attend the maintenance proceeding. Learned Counsel informs that the opposite party is a teacher of Bhadrakali High School, Uttarpara, District – Hooghly, which is nearly to Amta Court. On this score, learned Counsel urges that the petitioner has made out a strong case to get the order as sought for.

Per contra, learned Counsel appearing for the opposite party by referring to a decision dated August 29, 2005 rendered by the Hon'ble Apex Court in Transfer Petition (Civil) Nos. 191 and 146 of 2005 (*Anindita Das Vs. Srijit Das*) argues that the Hon'ble Apex Court departing from the previous stand to allow the applications of women seeking transfer, has observed that instead of transferring a matrimonial suit, the Court may award necessary travelling allowance to women so that they can attend the matrimonial proceedings brought by their husbands.

Here, the facts and circumstances are quite distinct from the facts and circumstances of the case of *Anindita Das (Supra)*. In the case one hand, a proceeding under Section 125 of the Criminal Procedure Code is pending in a Magistrate's Court at Amta and the opposite party has to attend this proceeding. Besides, the place of work of the opposite party, who is a teacher posted at Uttarpara, District – Hooghly is near to Amta Court.

Upon hearing the learned Counsels appearing for the parties and considering the totality of the facts and circumstances as narrated in the application of the petitioner,

I feel that it will be wise if the aforesaid matrimonial suit is withdrawn and transferred to the concerned Court at Amta, Howrah.

Accordingly, the transfer application is allowed.

Let the matrimonial suit being No.320 of 2021 pending in the court of the learned Additional District Judge, 5th Court, Burdwan at Purba Bardhaman be withdrawn and transferred to the court of the learned Additional District Judge, Amta, Howrah for disposal.

The learned Additional District Judge, 5th Court, Burdwan, Purba Bardhaman, is directed to transmit the case record of the matrimonial suit to the transferee court immediately after receipt of a copy of the order.

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.)