

27.9.2022
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Ct. no. 652
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C.O. 1752 of 2022

Suparna Dey (Manna)
Vs.
Sanjay Manna

Mr. Somnath Roy Chowdhury
...for the petitioner

Mr. Sourav Sengupta
Ms. Rituparna Sil Sarkar ...for the Opposite party

This is an application under Section 24 of the Code of Civil Procedure for transfer the Matrimonial suit no. 3646 of 2021 presently pending before the court of learned Additional District Judge, 5th Court, Alipore, 24 Pagranas (South) to the court of learned District Judge, Howrah.

The petitioner contended that the marriage between the parties was registered on 1.2.2018 under the provision of Special Marriage Act, 1954. It has been further alleged that the petitioner was subjected to physical and mental torture at the behest of the opposite party and other in-laws and relatives. On 10th September, 2018 her in laws including the opposite party tortured the petitioner brutally demanding Rs. 2 lakhs and the decree of torture went to such an extent that the petitioner compelled to leave her matrimonial house being rescued by her father. Thereafter, the

petitioner lodged a complaint at Shibpur police station being case no. 483 of 2018 under Section 498A/406/34 of the Indian Penal Code and at present it is pending before the learned Judicial Magistrate, Howrah. The petitioner subsequently filed an application under Section 12 of the Protection of women from Domestic Violence Act which is also pending before learned Judicial Magistrate, 1st Court, Howrah. Now it appears that the opposite party/husband has filed this suit for dissolution of marriage before the court of learned Additional District Judge, 5th Court, Alipore, 24 Pagranas (South) being matrimonial suit no. 3646 of 2021 on 17.12.2021.

Learned counsel for the petitioner submits that other two proceedings namely proceeding under Section 498A of Indian Penal Code and the proceeding under Domestic Violence Act are pending before the Howrah court. Moreover, the petitioner has a child of three years and she is an unemployed lady and she has none to accompany her to attend the court at Alipore, in order to contest the said Matrimonial suit. The petitioner's contention is that the suit should be heard in a place where other proceedings initiated by wife/petitioner are pending and in this context, petitioner relied upon the Apex court judgment reported in AIR 2016 SC 718.

Learned counsel for the opposite party submits that the distance between Chatterjeehat to Howrah court

and Howrah court to Alipore is almost same and therefore distance is not a factor in the present context. Moreover, in the proceeding under the Domestic Violence Act as per agreed terms the husband/opposite party is paying monthly maintenance of Rs. 12,000/- per month and accordingly, there must not be any difficulty for the petitioner to attend the court at Alipore, which is not far away and as such he has opposed the prayer for transfer as made by the petitioner. The opposite party in this context has relied upon a judgment in Shib Kumari Devenndra Ojha vs. Ramajor Shitlaprasad ojha and others reported in (1997) 2 SCC 452.

Having considered the facts of the case and that the petitioner is an unemployed lady as submitted and that she has a child aged about three years whom she is bringing up at present and that under the socio-economic condition, the petitioner/wife is to face more hardship if she is required to attend the divorce proceeding at Alipore, South 24 parganas and that other two proceeding namely under Section 498A and in the proceeding under Domestic Violence Act are pending before the Howrah court where the husband/opposite party would be required to attend, the prayer made by the petitioner is allowed.

Learned District Judge, Alipore, 24 parganas is directed to withdraw the Mat suit no. 3646 of 2021 pending before the court of learned Additional District

Judge, 5th Court, Alipore, 24 Pagaranas (South) and to transmit the same to the court of learned District Judge, Howrah within a period of three weeks from the date of communication of the order.

The transferee court shall issue fresh notice upon both the parties intimating next date of hearing before proceeding further with the present suit.

The department is directed to send a copy of the order to the learned District Judge, 24 Pagaranas (South) at Alipore and learned District Judge, Howrah.

The learned transferee court is further requested to make all endeavour for expeditious disposal of the suit and to take every measure so that the entire proceeding can be concluded preferably within a period of one year from the date of communication of the order.

Accordingly, C.O. 1752 of 2022 is disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)