

Ct. 22.7
No. 2022
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C.O. 1578 of 2021

**Somasree Biswas Alias Das
-Versus-
Sayak Das**

Mr. Subhrajyoti Ghosh ...For the Petitioner

**Mr. Prantick Ghosh
Mr. Siddhartha Sarkar ...For the Opposite Party**

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of a matrimonial suit from the Court of the learned Additional District Judge at Alipurduar to any of the competent Courts at Krishnagar, Nadia.

It is stated by the petitioner, Somasree Biswas alias Das that her marriage with the opposite party, Sayak Das was solemnized on July 03, 2017 according to Hindu rites and customs. The marriage between them was duly consummated and out of her wedlock with the opposite party, she gave birth to a male child, namely, Shreyan Das in the year 2018.

Soon after her marriage, the opposite party and his family members subjected her to torture in various ways. Ultimately, they drove her along with her minor child out of the house on May 19, 2019. Since then, she has been residing at her parental home situated at Village – Musalman Para, Post Office – Asannagar, District – Nadia.

In order to sustain livelihood, the petitioner has filed a maintenance case, being Misc. Case No. 296 of 2019 under Section 125 of the Code of Criminal Procedure and she has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, registered as Misc. Case No. 805 of 2019 against the opposite party. Both these two cases are pending in the

concerned Court of the learned Chief Judicial Magistrate at Krishnagar, Nadia.

On the allegations of torture meted out to her, the petitioner has lodged an FIR against the opposite party at Bhimpur Police Station under Section 498A of the Indian Penal Code and this proceeding is now pending in the Court of the learned Chief Judicial Magistrate at Krishnagar, Nadia.

The petitioner came to know that the opposite party brought a matrimonial suit, being No. 217 of 2021 against her before the Court of the learned Additional District Judge at Alipurduar seeking dissolution of marriage between them. The petitioner states that to reach the Court at Alipurduar, it will take 15/16 hours. The petitioner has no source of income and as such it will be hardship for her to appear before the Court at Alipurduar to attend the matrimonial proceeding keeping her minor child alone at her parental home. Hence, the prayer.

Learned Lawyer appearing for the petitioner submits that one criminal case under Section 498A, one maintenance case under Section 125 of the Cr. P.C. and a proceeding under Section 12 of the Protection of Women from Domestic Violence Act are pending in the concerned Courts at Krishnagar, Nadia. The child of the petitioner is too minor. The distance between the parental home of the petitioner and the Court at Alipurduar is nearly 579 kms. Under such circumstances learned Lawyer submits that the matrimonial suit may be transferred to the concerned Court at Krishnagar, Nadia.

Per contra, learned Lawyer appearing for the opposite party submits that the permanent address of the opposite party is at Madhyamgram. If the Court desires to transfer the matrimonial suit, the suit may be transferred either to the Court of the learned District Judge at Barasat or to the Court of the learned Additional District Judge at Barrackpore.

What it appears from the averments made in the application supported by affidavits and the materials placed on record, a criminal case under Section 498A brought by the petitioner against the opposite party is pending in the concerned Court of Judicial Magistrate at Krishnagar. Besides, a maintenance case under Section 125 of the Cr.P.C. and a proceeding under Section 12 of the Protection of Women from Domestic Violence Act brought by the petitioner against the opposite party are also pending in the concerned Courts of Judicial Magistrate at Krishnagar, Nadia.

This Court can take judicial notice that the distance between parental home of the petitioner and the Court at Alipurduar is nearly 600 kms. As it appears from the averments in the application, the petitioner has no source of income. Her child is too minor.

In a catena of decisions rendered by the Hon'ble Apex Court as well as by this Hon'ble High Court it has been held that inconvenience of the wife should be treated as a prime consideration while disposing of a proceeding under Section 24 of the Code of Civil Procedure.

Having heard the learned Counsels appearing for

the parties and considering the balance of convenience and inconvenience of the parties I feel that it will be wise to withdraw the aforesaid matrimonial suit from the Court of the learned Additional District Judge at Alipurduar and transfer the suit to the Court of the learned District Judge, Nadia at Krishnagar.

In view of the above, the revisional application is allowed.

Let the Matrimonial Suit, being No. 217 of 2021 be withdrawn from the Court of the learned Additional District Judge at Alipurduar and the suit be transferred to the Court of the learned District Judge, Nadia at Krishnagar for disposal.

Learned District Judge, Nadia at Krishnagar may dispose of the suit either by himself/herself or transfer the suit to any of the Courts of learned Additional District Judge at the station for disposal.

The learned Additional District Judge, Alipurduar 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, C.O. 1578 of 2021 stands 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.*)