

5.12.2022
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Ct. no. 652
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C.O. 2241 of 2022

Tamal Krishna Ghosh
Vs.
Smt. Prama Ghosh (Dey)

Mr. Satyendra Agarwal
Mr. Bijoy Bag ...for the petitioner

Mr. Prantick Ghosh
Mr. Siddhartha Sarkar
Mr. Prasad Bhattacharyya ...for the opposite party

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Matrimonial Suit no. 35 of 2018, presently pending before the learned Additional District Judge, Fast Track Court, 3rd Court, Basirhat, North 24 parganas to the court of Principal Judge, City Civil Court, Kolkata or to any competent court in some other District.

The petitioner contended that the marriage between the parties was solemnised in the year 2010. The said marriage was duly consummated. On 5.4.2018, the opposite party/wife had left her matrimonial home at her own accord and since then, she has been residing at her paternal house without any reasonable cause. The petitioner tried his level best to get back the opposite party/wife to lead a happy conjugal life but all were in vain. Subsequently, the petitioner filed aforesaid

application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. The Opposite party/wife after getting summon of the said suit appeared and filed written statement along with counter claim praying for passing decree of divorce and in the written statement, she denied all material allegations made in the plaint. The aforesaid suit, after transfer, is now pending before the learned Additional District Judge, Fast Track Court, 3rd Court, Basirhat, North 24 parganas.

The petitioner's main contention, in support of transfer, is that the wife/opposite party filed a petition under Section 24 of the Hindu Marriage Act and in the said suit, the husband herein filed written objection but the learned court below did not hear the husband/petitioner herein and fixed the date for passing order. Being aggrieved, the petitioner/husband preferred revisional application being C.O. 1007 of 2019. This court while disposing said application directed the court below to fix specific date and to give opportunity to petitioner herein to be heard before passing order. In spite of the fact that wife/opposite party did not pray for interim maintenance, court below granted interim maintenance of Rs. 3,000/- per month. Petitioner submits, he has no income, on the other hand, petitioner earns a lot. Petitioner herein filed application against wife/opposite party under Section 24 of the Hindu

Marriage Act for a direction upon wife to pay husband Rs. 2,500/- per month and wife/opposite party has also filed objection against said petition, but learned court below never taken up said petition for hearing.

His further allegation is that the wife/opposite party had already initiated a proceeding on 28.7.2018 under Section 498A/307/328/201 of the Indian Penal Code which is now pending before the court of learned Additional Chief Judicial Magistrate, Basirhat. The opposite party/wife, her family members and others had carried atrocities upon the petitioner's mother and for which a complaint was lodged to the Basirhat Police Station being Basirhat Police Station case no. 778 dated 6.8.2019. Petitioner alleged that opposite party/wife and his family members had made several attempts to lodge false first information report against petitioner and his family. The petitioner has also initiated a proceeding under Section 125 of the Code of Criminal Procedure for maintenance which is also pending before the court of learned Chief Judicial Magistrate, Basirhat.

The petitioner further submits that in the said proceeding under Section 125 of the Code, the petitioner herein appeared before the court of learned Additional Chief Judicial Magistrate, Basirhat on 6.3.2019 when it was fixed for hearing but on that date, the opposite party and her associates had threatened in the court for dire consequences for which the petitioner feels insecure to

contest the said misc. case being 394 of 2018 at Barishat. The advocate appearing for the wife has been aggressive and having influenced in the Bar association at Basirhat and under the influence and the behest of the Association forced the petitioner herein/opposite party for granting divorce so that the opposite party/wife can carry her professional work. The husband/petitioner did not adhere to the demand of pressure. The Bar association took all steps under the influence of the wife and her representative to get the husband and his family to trap the demand. In the said pretext, the learned advocate representing the husband also refused to cooperate in conducting the case in Basirhat on behalf of husband. On 10.12.2021, the petitioner was prevented to file hazira in the said matrimonial suit and the petitioner and his father were forcefully seek to apologise the legal practitioner of the Bar association for no reason or cause. The matter did not end there. At the behest of some persons in the legal fraternity, a false complaint was lodged against the petitioner herein and his father by one bench clerk attached to the learned Additional District Judge, Fast Track Court, 3rd Court, Basirhat. The petitioner's father was arrested on 10.1.2022 in connection with said case. Subsequently, the complainant in that case filed an application that he will not proceed with the said case. However, charge sheet

was submitted after conclusion of the investigation against the father of the petitioner.

Mr. Agarwal, learned advocate appearing for the petitioner further submits that due to aforesaid conduct of opposite party/wife, court staff, officers at Basirhat and Barasat and wife/opposite party having influence in the Bar Association at Bashirhat, petitioner apprehends that further, false cases may be lodged against him and to avoid untoward incident, threat to petitioner and his family, harassment of police and due to wife's high handedness, the petitioner seeks the aforesaid transfer.

Learned counsel for the opposite party raised objection and contended that from the cause title of the revisional application it is apparent that the opposite party/wife is a resident of Bashirhat and as such if the case is transferred to the court of principal bench at City Civil Court, Kolkata then it would be inconvenient for her to attend the said proceeding.

This is a suit initiated by the husband for restitution of conjugal rights where wife filed counter claim with a prayer for dissolution of marriage.

Considering the grounds of transfer as set out in the present application and that there are allegations and counter allegations over the incidents allegedly taken place at Bashirhat and that the petitioner is apprehending of not getting minimum logistic support therefrom in proceeding with the aforesaid Matrimonial

suit and also considering the submissions made by the parties and also considering the location and also the issue of transportation, in my considered opinion if the case is transferred from the court of learned Additional District Judge, Fast Track Court, 3rd Court, Basirhat to any competent court at Barrackpore, neither party will have a cause to prejudice.

In view of above, the learned District Judge, Barasat, North 24 parganas is hereby directed to withdraw the Matrimonial Suit no. 35 of 2018 presently pending before the learned Additional District Judge, Fast Track Court, 3rd Court, Basirhat and to transmit the same to the court of learned Additional District Judge, Barrackpore having jurisdiction to try the suit within a period of three weeks from the date of communication of the order.

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

The department is directed to send a copy of the order to the learned District Judge, Barasat, North 24 parganas and learned Additional District Judge, Barrackpore.

Accordingly, C.O. 2241 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.)