

S/L 220
19.01.2023
Court No.652
SD

CO 172 of 2022

Dr. Pallabi Bhattacharya
Vs.
Dr. Abhishek Chakladar

Ms. Suman Sehanabis
Ms. Atulya Sinha

... for the Petitioner.

Mr. Debasish Roy

... for the Opposite Party.

This is an application under Section 24 of the Code of Civil Procedure at the instance of the petitioner seeking transfer of Matrimonial Suit No.2147 of 2021 pending before the Court of learned Additional District Judge, 9th Court at Alipore to the Court of learned District Judge, Cooch Behar.

The petitioner contended that the petitioner was married with the opposite party on December 10, 2020. Both the petitioner and the opposite party are medical practitioners and presently the husband/opposite party is working in AIIMS Hospital at New Delhi and the petitioner is posted in MJN Hospital at Cooch Behar where she is presently residing. The petitioner submits that opposite party/husband all of a sudden filed aforesaid suit for dissolution of marriage, which is presently pending in Alipore court, North 24 Parganas District.

The petitioner submits that the distance involved in between Cooch Behar and Kolkata is more than 700 kms and the bus and train service from Cooch Behar to Kolkata are

not comfortable and safe. There is also no flight service facility in the Cooch Behar town and air service is available from Bagdogra which is 133 kms. away from Cooch Behar.

The petitioner submits that she has also initiated a proceeding for restitution of conjugal rights which is pending before the Cooch Behar Court and the aforesaid matrimonial suit filed by the husband for dissolution of marriage is required to be heard with the suit for restitution of conjugal rights filed by the petitioner.

Learned counsel appearing on behalf of the opposite party vehemently opposed the prayer for transfer and contended that the petitioner/wife is pursuing her study in NRS Medical College, where she is staying and she will have to pursue her studies for another three years and for which there is no need for aforesaid transfer and in fact, she is not facing difficulty in pursuing the said matrimonial suit. Accordingly, he prayed for rejection of the prayer for transfer.

Having considered the facts and circumstances of the case and the distance involved between the two places which is about 700 kms. and that husband/opposite party is now posted at New Delhi and he will have to attend the proceeding all the way from Delhi and that the matrimonial suit filed by the petitioner for restitution of conjugal rights is required to be heard analogously with the suit for dissolution of marriage, in order to avoid conflict of judicial decision and that in such cases, where husband has filed suit for

dissolution of marriage, the convenience of petitioner is of paramount consideration, the prayer made by the petitioner is allowed.

Accordingly, learned District Judge, South 24 Parganas at Alipore is hereby directed to withdraw the Matrimonial Suit No.2147 of 2021 presently pending before the Court of learned Additional District Judge, 9th Court at Alipore and to transmit the case record to the Court of learned District Judge, Cooch Behar for disposal within a period of three weeks from the date of communication of the order.

The transferee court shall give fresh notice intimating the next date of hearing upon both the parties before taking up further proceeding of the suit and the transferee court shall proceed with the suit at the stage where it reached till date.

Department is directed to serve a copy of this order to the learned District Judge, South 24 Parganas at Alipore as well as the learned District Judge, Cooch Behar.

With these observations, C.O. 172 of 2022 is disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)