

S/L 301
15.5.2023
Court No.652
SD

CO 583 of 2023

Smt. Sutanuka Kundu
Vs.
Sri Chayan Mukherjee

Mr. Subrata Santra

...for the Petitioner.

Mr. Pinaki Ranjan Mitra

...for the Opposite Party.

Affidavit of service filed by the petitioner and affidavit-in-opposition filed by the opposite party in court today be kept with the record.

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Act VIII Case No.01 of 2023 from the Court of learned District Judge, Purba Medinipur at Tamluk to the Court of learned District Judge, Howrah.

The petitioner contended that the marriage between the petitioner and the opposite party was registered on 03.01.2016 under the provision of Special Marriage Act and the marriage was duly consummated. Due to such wedlock, one male child was born who is now residing with the petitioner/mother at Ramrajatala, Howrah.

Petitioner further submits that she has initiated a proceeding under Section 12 of the Protection of Women from Domestic Violence Act and the said case is pending before the learned Judicial Magistrate, 1st Court, Howrah for disposal.

All of a sudden, the husband/opposite party/father has instituted aforesaid Act VIII proceeding in the Tamluk Court. The petitioner submits that the petitioner is suffering from breathing problem and hypertension and she is not in a position to attend the court at Tamluk which situates at a distance of more than 100 kms. from her present place of residence. Moreover, the child is only five years old and school going and the ward's ordinary place of residence is within the jurisdiction of learned District Judge, Howrah.

Accordingly, he submits that the court at Tamluk cannot have territorial jurisdiction to try the said proceeding and as such, she has sought for aforesaid transfer.

Learned counsel appearing on behalf of the opposite party controverted the allegations so far alleged against opposite party in the application for transfer. But he admits that the child presently resides with the mother/petitioner herein, within the jurisdiction of learned District Judge, Howrah.

Having considered the facts and circumstances of the case and that Section 9(1) of the Guardian and Wards Act, 1890 has created a specific jurisdiction to try such proceedings taking into consideration the benefit and welfare of the child, I find that this is a fit case where the prayer made by the petitioner is required to be allowed.

C.O. 583 of 2023 is thus allowed.

Accordingly, learned District Judge, Purba Medinipur at Tamluk is hereby directed to withdraw the Act VIII Case No.1 of 2023 from the Court of learned District Judge, Purba

Medinipur and to transmit the case record to the Court of learned District Judge, Howrah within a period of four 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 send a copy of this order to the learned District Judge, Howrah as well as learned District Judge, Purba Medinipur at Tamluk immediately.

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.)