

7.2.2023
167
Ct. no. 652
sb

C.O. 550 of 2018

Smt. Arpita Sil
Vs.
Sri Sagar Nayak

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chattopadhyay
Ms. Trisha Rakshit
Ms. Rajashree Tah
Mr. Gourab Das ...for the petitioner

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder ...,for the opposite party

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of the Matrimonial suit being no. 3509 of 2017 pending before the court of learned Additional District Judge, 1st Court, Serampore to any competent court at Paschim Bardhaman, Asansol.

The petitioner contended that the petitioner was married with the opposite party on 22.5.2017 according to Special Marriage Act, 1954. The petitioner alleged that since her in laws were not satisfied with the articles and ornaments given at the time of marriage, the opposite party and his family members inflicted physical and mental torture upon the petitioner. She further alleged that the opposite party and his family members created pressure upon the petitioner not to continue her relationship with her parents. The petitioner also stated

that some unfortunate incidents took place on 25.5.2017 and 26.5.2017, on which dates she was allegedly humiliated, insulted and assaulted physically. The petitioner alleged that with the passage of time the misery of the petitioner increased at her matrimonial home. Since the torture increased day by day, the opposite party was compelled to return to her paternal home. After return at her father's home, she lodged a case under the provision of Protection of Women from Domestic Violence Act which is pending before the court of learned Judicial Magistrate, 5th Court, Asansol. Subsequently, the opposite party herein filed aforesaid suit under Section 9 of the Hindu Marriage Act for restitution of conjugal rights which is pending in the court of learned Additional District Judge, Serampore, Hooghly.

Learned counsel for the petitioner further submits that she is a student of BA pass course and she has no source of income of her own and she is unable to maintain herself. There are no other members, save and except her aged parents to accompany her from Asansol to Serampore in conducting the aforesaid proceeding. She further submits that the court at Serampore situates at a distance of about 180 kilometres from her present residence which involves journey for more than two hours. The petitioner is facing lot of difficulties in attending the said court proceeding at Serampore court

and as such the petitioner has prayed for aforesaid transfer.

Learned counsel for the opposite party raised vehement objection contending that this court earlier sent the parties for reconciliation but the said reconciliation failed as the petitioner wife does not want to make any reconciliation and she wants divorce only and her said stand reflected in the order dated 29.3.2019 passed by the learned Additional District Judge, 1st Court, Serampore. He further contended when the parties went to Serampore court for reconciliation, the husband opposite party was abused with filthy languages and was assaulted physically by the petitioner and her associates and for which a criminal case has been started by the husband/opposite party which is pending before the learned Additional District Judge, 1st Court, Serampore being CR no. 286 of 2019. Accordingly, the opposite party/husband submits that if the case is transferred to Asansol court then he is apprehending serious type of assault and humiliation by the petitioner and her associates.

Considered the submissions made by both the parties. Among the factors that are required to be considered for passing an order of transfer under the Code, Apex court has laid down certain common factors in N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha which are to be taken into consideration are economic

soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life.

In Kulurinder Kaur Vs. Kandi Friends Education Trust and others, (2008) 3 SCC 659, the Apex court laid down certain broad propositions as to what may constitute a ground for transfer. They are balance of convenience or inconvenience to the plaintiff or defendant or witness, convenience or inconvenience of a particular place of trial having regard to the nature of evidence or the points involved in the suit, issues raised by the parties, reasonable apprehension in the mind of litigant, that he might not get justice in court, in which the suit is pending, important question of law involved as a considerable section of public interested in the litigation, interest of justice demanding for transfer etc.

Having considered the facts and circumstances of the case and also considering geographic location, balance of convenience and inconvenience of the parties and the issue raised by the parties, I find that if the matrimonial suit is transferred to the court of learned District Judge, Purba Bardhaman, neither party will have a cause to prujudice.

Learned District Judge, Hooghly at Chinsurah is hereby directed to withdraw the Matrimonial suit being no. 3509 of 2017 pending before the court of learned Additional District Judge, 1st Court, Serampore and to transmit the same to the court of learned District Judge, Purba Bardhaman 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 and learned transferee court will continue the proceeding at the stage where it reached till date.

The department is directed to send a copy of the order to the learned District Judge, Hooghly at Chinsurah and learned District Judge, Purba Bardhaman immediately.

Accordingly, C.O. 550 of 2018 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.)