

Ct. 03.01
No. 2023
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C.O. 1047 of 2022

Smt. Writapa Biswas

-Versus-

Subashish Biswas

Mr. Sukanta Das

...For the Wife/Petitioner

Mr. Subir Kumar Roy

Mr. Mrityunjay Saha

...For the Husband/Opposite Party

Affidavit-in-opposition filed by the opposite party as well as affidavit-in-reply filed by the petitioner be kept on record.

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, 1st Court at Barasat, North 24-Parganas to the Court of the learned District Judge, Paschim Medinipur at Midnapore.

The marriage between the petitioner Smt. Writapa Biswas and the opposite party Subashish Biswas was registered on 13th October, 2017 and their marriage was solemnized on 22nd January, 2017. After their marriage, the petitioner started residing with the opposite party at her matrimonial home at 513, Dum Dum Part, Flat No. 201, Pujarini apartment, Kolkata – 700 055.

It is alleged by the petitioner that soon after her marriage, the opposite party subjected her to cruelty by various ways. Unable to bear with the torture meted out to her, the petitioner left her matrimonial home and took shelter at her parental home at Kuikotha (Girijapara), P.O. Midnapore, P.S. Kotwali, District - Paschim Medinipur. The petitioner has no source of income.

In order to sustain livelihood, the petitioner has filed a maintenance case under Section 125 of the Code of Criminal Procedure in the concerned Court at Paschim

Medinipore. She states that she is now getting maintenance allowance of Rs. 2,000/- per month. Besides, she has filed an application under Section 12 of the Protection of Women from Domestic Violence Act against the opposite party and the said proceeding is now pending in the Court of learned 5th Judicial Magistrate at Midnapore.

In the middle part of the March, 2022 the petitioner after receiving a summons came to know that the opposite party filed a matrimonial suit being No. 119 of 2022 under Section 22 of the Special Marriage Act, 1984 against her for restitution of conjugal rights and the said suit is now pending in the Court of the learned Additional District Judge, Barasat, North 24-Parganas.

The petitioner submits that both of her parents are aged. The distance between her parental home and the Court at Barasat is more than 150 kms. Owing to their old age, none of her parents will be in a position to accompany her to appear before the Court at Barasat. She has no income of her own. Under such hardship, the petitioner seeks transfer of the aforesaid matrimonial suit.

The opposite party in his affidavit-in-opposition denies the substantial averments/allegations as made in the application for transfer. The opposite party states that a learned coordinate Single Bench of this High Court has observed that there is chance of reconciliation between the parties. Hoping that the matrimonial discord between them will to come to an end the opposite party seeks dismissal of the revisional application.

Learned Counsel appearing for the petitioner submits that a maintenance proceeding 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 Midnapore and the opposite party has to appear before the Courts at Midnapore to participate in the aforesaid proceedings. He further submits that the distance between the parental home of the petitioner and the Court at Barasat is more than 150 kms. Learned Counsel points out that inconvenience of a woman should be of paramount consideration while disposing of an application under Section 24 of the Code of Civil Procedure. On such score, learned Counsel urges that the application be allowed.

Per contra, learned Counsel for the opposite party submits that the learned coordinate Bench while hearing the instant application for transfer has observed that there is a possibility of reconciliation between the parties. He suggests that the matter may be referred to the Mediation Centre so that the matrimonial differences between the parties may be ironed out.

From the materials placed on record it does not transpire that any effective step has been taken by the parties jointly to have their matrimonial disputes resolved. Under such circumstances I feel that the application on hand should be disposed of.

It is not in dispute that the petitioner is now residing at her parental home at the aforesaid address. Undisputedly, the petitioner, in order to sustain her livelihood has filed one application under Section 125 of the Cr. P.C., which is pending in a Court of learned Judicial Magistrate at Midnapore. Besides, a proceeding under Section 12 of the Protection of Women from Domestic

Violence Act is also pending in a Court of a learned Judicial Magistrate at Midnapore.

Admittedly, the distance between the parental home of the petitioner and the Court at Barasat is more than 150 kms. In a catena of decisions rendered by the Hon'ble Apex Court and this High Court it has been held that inconvenience of wife should be of paramount consideration while disposing of an application under Section 24 of the Code of Civil Procedure.

Having heard the learned Counsels appearing for the parties and considering the facts and circumstances as stated in the application, I feel that it will be wise to allow the revisional application.

Accordingly, the revisional application is allowed.

Let the matrimonial suit being MAT No. 119 of 2022 be withdrawn from the Court of learned Additional District Judge, 1st Court at Barasat, North 24-Parganas and the suit be transferred to the Court of the learned District Judge, Paschim Medinipur at Midnapore for disposal.

The learned Additional District Judge, 1st Court at Barasat, North 24-Parganas is directed to transmit the case record of the matrimonial suit forthwith on receipt of copy of this order.

Learned District Judge at Paschim Medinipur at Midnapore, may dispose of the suit either himself/herself or transfer the suit to any of the competent Courts at the station for disposal.

The transferee Court is directed to make all endeavour so that the matrimonial discord between the parties may be resolved through the mechanism of mediation.

With the aforesaid direction C.O. 1047 of 2022 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.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

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.)