

8.2.2023
169
Ct. no. 652
sb

C.O. 1165 of 2022

Smt. Swagata Roy Dey
Vs.
Sri Deborshi Roy

Mr. Rwitendra Banerjee
Mr. Shibasis Chatterjee
Mr. Debdutta Pathak ...for the petitioner

Mr. Pinaki Ranjan Chakraborty
 ...for the opposite party

Affidavit-in-reply filed by the petitioner is taken on record.

This is an application under Section 24 of the Code of Civil Procedure at the instance of petitioner/wife seeking transfer of G.S. no. 38 of 2021 pending before the court of learned District Judge, Berhampore, Murshidabad to the court of learned Additional District Judge, Barrackpore, North 24 parganas.

The petitioner contended that the petitioner was married with the opposite party on 29th January, 2015 according to Hindu Rites and Customs. The parties are blessed with a male child. The petitioner alleged that though the petitioner dreamt of a happy matrimonial life, the husband/opposite party constantly inflicted physical and mental torture, as a result the petitioner was constrained to leave her matrimonial home and started residing at her father's house at Berhampore which was

the work place of her father in a government quarter. Subsequently his father retired from service and now she is residing with her child at Barrackpore. The husband/opposite party initiated aforesaid proceeding under the provision of Guardians and Wards Act, 1890 for declaration of guardianship and the custody of the child, which is pending before the court of learned District Judge, Murshidabad at Berhampore. The petitioner submits that the court at Berhampore situates at a distance of about 170 kilometers and the journey consumes for each day is about Rs. 600/-. The petitioner has no relative nor any alternative accommodation at Berhampore so that she can stay overnight. Therefore, the petitioner is facing extreme inconvenience to attend the said proceeding at Berhampore along with the child. Petitioner also referred Section 9 of the Guardian and Wards Act, 1890 and contended that the ward ordinarily resides with mother/petitioner within the jurisdiction of Barrackpore court and he is student of a school within Barrackpore sub-division. In support of the same petitioner filed document as annexure. Accordingly, the petitioner has prayed for aforesaid transfer.

Learned counsel for the opposite party raised objection and prayed for dismissal of the present application.

Having considered the facts and circumstances of the case and that Section 9 of the Guardian and Wards

Act, 1890 specifically created jurisdiction under the statute and the ward stated to be ordinarily resides within the jurisdiction of the Barrackpore court and also considering the distance and for which the inconveniences that are likely to be faced by the petitioner in attending the said proceeding at Berhampore, Murshidabad, the prayer made by the petitioner is allowed.

Learned District Judge, Berhampore, Murshidabad is hereby directed to withdraw the G.S. no. 38 of 2021 pending before the court of learned District Judge, Berhampore, Murshidabad and to transmit the same to the court of learned District Judge, Barasat, North 24 parganas within a period of three weeks from the date of communication of the order, who in turn will transfer the same to the court of learned Additional District Judge Barrackpore having jurisdiction to try the same within a period of three weeks thereafter.

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, Berhampore, Murshidabad and learned District Judge, North 24 parganas at Barasat immediately.

Accordingly, C.O. 1165 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.)