

S/L 203
10.01.2023
Court No.652
SD

CO 1548 of 2022

Sarmistha Banik (Samanta)
Vs.
Biswajit Banik

Mr. Dhananjay Banerjee
Ms. Oindrila Ghosh

...for the Petitioner.

Mr. Anupam Das
Mr. Santanu Kumar Sen
Mr. Soupal Chatterjee
Ms. Sucheta Banerjee

...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.2334 of 2021 pending before the Court of learned Additional District Judge, Fast Track Court No.3, North 24 Parganas at Barasat to the Court of learned Additional District Judge, Barrackpore.

The petitioner contended that the petitioner was married with the opposite party according to Hindu rites and customs on 05.5.2003. The parties are blessed with a female child and presently under the custody of the petitioner/mother.

The petitioner alleged that after marriage the opposite party started inflicting physical and mental torture upon the petitioner on demand for further money and the degree of torture allegedly increased day-by-day and as such, the petitioner was constraint to leave her matrimonial home and took shelter at her parental house at Beliaghata, Kolkata.

The petitioner alleged that she compelled to initiate a criminal proceeding under Section 498A/406 of the Indian Penal Code which is now pending before the learned ACJM, Barrackpore. She further contended that as she is unemployed she has filed a case under Section 125 of the Code of Criminal Procedure, seeking maintenance which is also pending before the learned Judicial Magistrate, Barrackpore. Thereafter, the petitioner also preferred a case for dissolution of marriage under Section 13 of the Hindu Marriage Act which is also pending before the learned Additional District Judge at Barrackpore.

In the meantime the opposite party/husband has initiated aforesaid proceeding under Section 9 of the Hindu Marriage Act for restitution of conjugal right, being Matrimonial Suit No.2334 of 2021, which is pending before the learned Additional District Judge, Fast Track Court-III, Barasat.

The petitioner contended that both the proceedings filed by the parties that is the prayer for dissolution of marriage and prayer for restitution of conjugal rights need to be heard analogously.

The distance involved between the place of the present residence of the petitioner and the court at Barasat is about 40 kms. in both ways. The petitioner further submits that the opposite party has to contest all the proceedings pending before the learned court below at Barrackpore. Hence, the opposite party will not be prejudiced if the

aforesaid prayers for transfer made by the petitioner is allowed.

Learned counsel appearing on behalf of the opposite party submits that the opposite party is a 40% disabled person. However, it is submitted that the opposite party is able to move. He further submits that distance between Barrackpore and Barasat is not far and as such, there is no justification for praying such transfer and accordingly, he has sought for dismissal of the prayer for transfer made by the petitioner.

Having considered the facts and circumstances and that the petitioner is an unemployed lady and custodian of a minor child and that three other proceedings initiated by the petitioner are pending before the Court at Barrackpore where the opposite party would be required to attend and that the suit for restitution of conjugal right and the suit for dissolution of marriage filed by the petitioner should be heard analogously, the prayer made by the petitioner is allowed.

Accordingly, learned District Judge, North 24 Parganas at Barasat is hereby directed to withdraw the Matrimonial Suit No.2334 of 2021 presently pending before the Court of learned Additional District Judge, Fast Track Court No.3, at Barasat and to transmit the case record to the Court of learned Additional District Judge, at Barrackpore having jurisdiction 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.

The opposite party/husband will be at liberty to pray before the transferee court for consolidation of dates with other proceedings, pending against the opposite party before the Barrackpore Court.

Department is directed to serve a copy of this order to the learned District Judge, North 24 Parganas at Barasat as well as the learned Additional District Judge, Barrackpore.

With these observations, C.O. 1548 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.)