

10.1.2023
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Ct. no. 652
sb

C.O. 1961 of 2022

Smt. Moumita Sil nee Das
Vs.
Sri Subhayan Sil

Mr. Sudip Ghosh Chowdhury
...for the petitioner

Mr. Samiran Giri
Mr. Pinaki Bhattacharya
Mr. Amartya Mohan Bhattacharya
....for the opposite party

This is an application under Section 24 of the Civil Procedure Code seeking transfer of the Matrimonial suit being no. 1077 of 2022 presently pending before the court of learned Additional District Judge, 7th Court, Alipore, South 24 parganas to the court of learned Additional District Judge, Serampore, Hooghly.

The petitioner contended that the petitioner was married with the opposite party according to Hindu Rites and customs on 24.2.2012 and she alleged that after marriage she was subjected to physical and mental cruelty by her husband and her in laws for further demand of dowry. They are blessed with a female child who was born on 28.10.2013 who is presently in the custody of the petitioner and pursuing her studies at school. The petitioner further alleged that since she was subjected to physical and mental cruelty by her husband

and her in laws, she lodged a criminal case being Bansdroni Police Station case no. 116 of 2019 on 21.7.2019. The petitioner submits that she is an unemployed lady and she has no independent source of income. She states her husband has not paid maintenance to her or to her child for which, the petitioner filed a case seeking maintenance under Section 125 of the Code of Criminal Procedure for herself and minor child in the court of learned Judicial Magistrate, 2nd court at Serampore. The petitioner has also filed a case under the provision of Protection of Women from Domestic Violence Act, before same 2nd court, at Serampore.

All of a sudden as counter blast the opposite party/husband filed aforesaid suit for dissolution of marriage against the present petitioner which is pending before the court of learned Additional District Judge, 17th Court, Alipore. The petitioner contended that she is a patient of Renal failure and she has undergone surgery thrice and she is suffering from vertigo and doctor has advised her not to travel by bus or train and that she is presently the custodian of minor child and both the proceedings initiated by the petitioner are pending before the Serampore court and that the distance in between the petitioner's place of residence and the court at Alipore is about 70 kilometres. In view of all, the petitioner is facing lot of inconveniences and hardship in

attending said case at Alipur and for which she has sought for aforesaid transfer.

The opposite party raised strong objection contending that he was subjected to threat by the petitioner herein while he attended the court at Serampore in connection with other case and for which he lodged complain and that if the court at all consider the prayer for transfer made by the petitioner, it may be transferred to the court at Howrah which will be convenient for both the parties to attend. In reply, learned counsel for the petitioner raised objection and contended that due to her ailments, Howrah court will not be convenient for the petitioner and petitioner also denied allegation of threatening opposite party. In this context, he relied upon a judgment reported in AIR 2020 SC 4548 and contended that for transfer, the convenience of the wife must be given preference by the court.

Having considered the aforesaid facts and that the petitioner is suffering from various ailments and that she is custodian of a minor child and that two other proceedings initiated by the petitioner are pending before the Serampore court, where the opposite party would be required to attend and also considering the distance factor, and that in such cases where the husband has filed suit for dissolution of marriage, the convenience of wife would be of paramount importance and that

inconvenience caused to a woman in travelling to another place with child, specially when she is suffering from ailments, for pursuing a matrimonial case is much more than the inconvenience caused to husband, the prayer for transfer made by the petitioner is allowed.

The learned District Judge, South 24 parganas at Alipore is hereby directed to withdraw the matrimonial suit no. 1077 of 2022 presently pending before the court of learned Additional District Judge, 7th Court, Alipore, South 24 parganas and to transmit the same to the court of learned District Judge, Hooghly at Chinsurah within a period of three weeks from the date of the communication of the order who in turn will transfer the same to the learned District Judge at Serampore, Hooghly having jurisdiction within a period of three weeks thereafter.

The transferee court shall issue fresh notice to both the parties intimating the next date of hearing before taking up further proceeding of the suit.

The department is directed to send a copy to the court of learned District Judge, South 24 parganas, Alipore and also to the learned District Judge, Hooghly at Chinsurah.

Accordingly, C.O. 1961 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.)