

S/L 229  
03.01.2023  
Court No.652  
SD

CO 2327 of 2022

Smt. Maya Sarkar @ Mita Sarkar  
Vs.  
Ila Sarkar @ Ila Rani Sarkar & Anr.

*Mr. Sounak Bhattacharyya*  
*Mr. Abhirup Halder*

*...for the Petitioner.*

*Mr. Rajdeep Bhattacharya*

*...for the Opposite Parties.*

Affidavit of service filed by the petitioner in Court today be kept with the record.

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Title Suit No.91 of 2015 pending before the Court of learned Civil Judge (Junior Division), 2<sup>nd</sup> Court at Baruipur to any court of learned Civil Judge (Junior Division) at Alipore, South 24 Parganas.

The petitioner contended that the marriage of the petitioner and her husband, Dr. Samir Kumar Sarkar was solemnized on July 15, 1994. The petitioner alleged that immediately after the said marriage, the petitioner was treated with cruelty by her husband and the opposite parties herein who being her in laws and as such, on and from May 1, 2009 the petitioner did not have any physical relationship with her husband till date.

In spite of receiving several threats from the husband and the in laws and in spite of treating her with several mental cruelties, the petitioner is still staying at the ground

floor of her matrimonial home. The husband of the petitioner, namely, Dr. Samir Kumar Sarkar is staying at a rented accommodation elsewhere. The husband of the petitioner had filed a matrimonial suit praying for dissolution of marriage before the court of learned District Judge at Alipore which was registered as Matrimonial Suit No.51 of 2014 which is presently pending before the learned Additional District Judge, 1<sup>st</sup> Court at Alipore.

The petitioner herein is contesting the said matrimonial suit. The petitioner states that the petitioner resides at the ground floor of her matrimonial home and the opposite party no.1 being the mother-in-law of the petitioner stays in the first floor of the same building. The opposite party no.2 happens to be the sister-in-law of the petitioner. The matrimonial house property of the petitioner was owned by her father-in-law, Dhirendra Nath Sarkar and after his death the opposite party nos.1 and 2 and the husband of the petitioner inherited  $\frac{1}{3}$ <sup>rd</sup> share each and subsequently, husband of the petitioner gifted his  $\frac{1}{3}$ <sup>rd</sup> share in favour of the opposite party nos.1 and 2 herein by a registered deed of gift dated 18.8.2014 and as such, the opposite party nos.1 and 2 became the absolute owner of the said property.

The petitioner alleged that the opposite parties herein on ill advise of her husband filed suit for eviction of a license against the present petitioner being Title Suit No.91 of 2015 before the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court at Baruipur. The petitioner submits that the petitioner is an

unemployed woman and is not maintained by her husband. She further submits that the distance from the matrimonial house of the petitioner to the Baruipur Court is about 15 kms. and in order to reach Baruipur Court she has to avail various transportations and the time taken to reach to Baruipur Court from her matrimonial home is about one hour on each side. On the other hand, the court at Alipore has good transportation from her residence and by availing such, she can directly reach Alipore Court from her matrimonial home. She is suffering from osteo arthritis and doctor has advised her for knee replacement. Accordingly, she has sought for transfer of aforesaid suit for eviction filed by the opposite parties herein from the Court of Baruipur to the Court at Alipore.

Mr. Rajdeep Bhattacharya, learned counsel appearing on behalf of the opposite parties, vehemently raised objection and contended that the suit property situates within the territorial jurisdiction of Baruipur Court and as such, the Baruipur Court is the only competent court who can try and dispose of the said proceeding.

He further submits that the petitioner/wife had initiated one proceeding under Section 125 of the Code of Criminal Procedure seeking maintenance and the execution case in respect of which is pending before the Baruipur Court where she would be required to attend to that proceeding. Moreover, they have preferred a Misc. appeal against an order passed in eviction suit being Misc. Appeal No.19 of

2019 which is pending before the Baruipur Court where the petitioner also would be required to attend. Accordingly, he submits that there is no need to transfer the aforesaid proceeding from the Court at Baruipur to the Court at Alipore, specially when Baruipur Court is not far away from her residence.

Considered the submissions made by both the parties.

It appears that the ground for transfer as sought for in the application is that the court at Alipore is closer to the house of the petitioner herein than the Court situates at Baruipur. The other ground is that the matrimonial suit filed by the husband against the present petitioner is pending in the Alipore Court and that she is suffering from arthritis.

Considering the facts and circumstances of the case, it appears to me that when the suit for eviction has been filed before a particular court having territorial jurisdiction, the filmsy ground of inconvenience of the wife/petitioner or the ground that the wife/petitioner is suffering from arthritis are not sufficient grounds to transfer the case from the Court of Baruipur to the Court at Alipore, specially when it is admitted position that her other proceeding is pending at Baruipur court, where she would be required to attend and when admittedly said court situates at a distance of 15 km and it takes only one hour to reach Baruipur Court from the petitioner's present residence.

In view of the aforesaid facts and circumstances of the case, I do not find that it is a fit case where the prayer for transfer can be allowed.

Accordingly, CO 2327 of 2022 is dismissed.

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.)**