

S/L 230
03.01.2023
Court No.652
SD

CO 2349 of 2022

Ashis Bandhu Mitra
Vs.
Kakoli Mitra

Mr. Ram Prakash Banerjee
Mr. Bidyut Barann Biswas
Mr. Alope Chakraborty
Mr. Ranjit Rath

...for the Petitioner.

Mr. Pappu Adhikary
Mr. Subir Debnath
Ms. Roma Roy

...for the Opposite Party.

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Misc. Execution Case No.23 of 2022 from the Court of learned Judicial Magistrate at Tehatta, Nadia to the Court of learned Judicial Magistrate, Barasat.

The petitioner contended that the opposite party herein is the wife of the petitioner who has filed an application under Protection of Women from Domestic Violence Act, 2005 before the learned Judicial Magistrate at Tehatta seeking maintenance.

Learned Judicial Magistrate, Tehatta, Nadia by an order dated 18.5.2018 was pleased to pass interim monetary relief of Rs.3,500/- per month in favour of the wife/opposite party herein and their daughter from the date of passing of the order in M.R. Case No.116 of 2017.

The opposite party/wife filed an execution proceeding before the same court that is learned Judicial Magistrate at

Tehatta, Nadia for execution of the said order being Misc. Execution Case No.23 of 2022 which is pending before the said Court of Judicial Magistrate at Tehatta.

Now the petitioner herein/husband submits that he is residing at Belgharia and he is an employee of a private company and he is facing difficulty to contest the said proceeding at Tehatta on every occasion due to long distance. He further submits that unless the said proceeding is transferred from Tehatta, it will not be possible for the petitioner to attend the Court at Tehatta on every occasion because the petitioner will not get leave from his office and the petitioner may be sacked from his service for taking frequent leave.

The petitioner further submits that the service of the petitioner is the only source of income and the old aged ailing parents completely depending upon the petitioner and if the petitioner is sacked from his service, then the entire family will be ruined. Accordingly, he has sought for aforesaid transfer.

Mr. Pappu Adhikary, learned counsel appearing on behalf of the opposite party, vehemently opposed the aforesaid prayer and contended that Section 28 of the Protection of Women from Domestic Violence Act provides that all proceedings under Section 12 shall be governed by the provisions of the Code of Criminal Procedure and as such, the present application is not maintainable. Moreover, the grounds assigned by the petitioner is not sufficient to get

any favourable order. The opposite party further submits that the proceeding under the Protection of Women from Domestic Violence Act was throughout conducted in the court of learned Judicial Magistrate at Tehatta and the petitioner did not face any difficulty to contest the same and as the petitioner herein has not paid maintenance amount as ordered by the Magistrate, and as the opposite party filed the execution case to secure payment, so in order to avoid the said payment, he has sought for aforesaid transfer.

He further submits that the opposite party being an unemployed lady is residing at Tehatta having no source of income and it would be great hardship for the opposite party to attend a court at Barasat, if the aforesaid prayer for transfer is allowed.

Having considered the facts and circumstances of the case and that the ground of inconvenience of husband in support of transfer as assigned by the petitioner appears to be not sufficient and that when the statute has conferred jurisdiction to the executing court to deal with the execution case in terms of section 28 of the said Act, I find that this is not a fit case where the prayer for transfer can be allowed.

Accordingly, CO 2349 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.)