

11.04.2023

CO 3368 of 2022

**Sri Niravra Bhowmick
Vs.
Mrs. Twisha Ghosh**

Mr. Prosenjit Mukherjee
Mr. Saptarshi Chakraborty
... .. for the petitioner
Mr. S. Chatterjee
... .. for the opposite party

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

This is an application under Section 24 read with Section 22 of the Code of Civil Procedure seeking transfer of Matrimonial Suit No. 2240 of 2020 presently pending in the Court of learned 2nd Additional District Judge, North 24-Parganas at Barrackpore to the Court of learned Additional District Judge, South 24-Parganas at Alipore.

The petitioner contended that the petitioner married with the opposite party on 17th October, 2011. The petitioner further submits that he is an Assistant Teacher of a Primary School and presently posted at Bidhan Chandra G.S.F.P. School under Circle XV under Kolkata Primary School Council. He further submits that the opposite party/wife is also an Assistant Primary School Teacher and presently posted at Oriental Seminary for Girls' Primary under Circle XIX.

The petitioner alleged that the wife/opposite party all of a sudden left her matrimonial home on 17th July, 2022. He further submits that finding no other

alternative the petitioner/husband requested the opposite party/wife through advocate's letter to dissolve the marriage by way of mutual divorce. But getting no response to the said letter the husband filed a suit for dissolution of marriage under Section 27 of the Special Marriage Act which is now pending before the learned Additional District Judge, South 24-Parganas at Sealdah.

All on a sudden, the opposite party/wife initiated a proceeding under Section 22 of the Special Marriage Act, 1954 praying for restitution of conjugal rights which is now pending before the learned Additional District Judge, 2nd Court at Barrackpore.

Learned counsel appearing on behalf of the petitioner submits that the petitioner's case for dissolution of marriage is earlier one which is pending before Sealdah Court and in order to avoid conflict of judicial opinion, both the suits, i.e., petitioner's suit for dissolution of marriage and the wife/opposite party's suit for restitution of conjugal rights are required to be heard by the same Judge and as such the instant suit is required to be transferred from the Court of Barrackpore to the Court at Sealdah.

He has further submitted that from the cause title of the divorce petition it is palpable clear that the opposite party/wife also resides close to Sealdah Court and as such if the proposed transfer is allowed the opposite party/wife will have no cause to prejudice.

Learned counsel appearing on behalf of the opposite party has not disputed that the opposite party/wife is residing close to Sealdah Court. But he submits that the petitioner/husband is residing within the jurisdiction of Barrackpore Court and accordingly even if the present prayer for transfer is not allowed, it will not be prejudicial to the husband/petitioner.

Having considered the facts and circumstances of the case and in order to avoid conflict of judicial decisions and that the opposite party/wife has her residence close to Sealdah Court, the prayer made by the petitioner is allowed.

Learned District Judge, North 24-Pargans at Barasat is hereby directed to withdraw the Matrimonial Suit No. 2240 of 2022 from the Court of learned 2nd Additional District Judge, North 24-Parganas at Barrackpore and to transmit the same to learned District Judge, South 24-Parganas at Alipore within a period of three weeks from the date of communication of the order, who in turn will transmit the same within a period of three weeks thereafter to the Court of learned Additional District Judge, South 24-Parganas at Sealdah, who will make analogous hearing of the present suit with the petitioner's suit for dissolution of marriage being MAT Suit No. 87 of 2022.

The transferee Court shall serve fresh notice upon both the parties intimating the next date of hearing

before proceeding further with the suit and will proceed from the stage where it reached till date.

The transferee Court shall made every endeavour for expeditious disposal of the both the suits.

The department is directed to send a copy of the order to the learned District Judge, South 24-Parganas at Alipore and learned District Judge, North 24-Parganas at Barasat.

Accordingly, C.O. 3368 of 2021 is disposed of.

(Ajoy Kumar Mukherjee, J.)