

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

C.O. 3594 of 2022

**Indrani Bhattacharjee nee Banik
Vs
Dr. Soham Bhattacharjee**

For the Petitioner : Mr. Tapash Kumar Bhattacharya
Mr. Aviroop Bhattacharya

For the Opposite party : Ms. Reshmi Ghosh
Mr. Soumya Sankar Chini

Heard on : 31.01.2023

Judgment on : 09.02.2023

Ajoy Kumar Mukherjee, J.

1. This is an application under section 24 of the Code of Civil Procedure at the instance of petitioner /wife seeking transfer of Matrimonial Suit No. 2544 of 2022 pending before the Learned 4th Fast Track Court, Alipore to the court of learned District Judge at Jalpaiguri. Petitioner contended that the petitioner was married with the opposite party on 01.11.2021 at Jalpaiguri and after marriage both the parties lived together at Naktala, Kolkata. Petitioner submits that presently she is working in Jalpaiguri Sadar Hospital as staff nurse under Health Department, Government of west Bengal and she is residing at her

parent's House at Jalpaiguri. Opposite party husband is a doctor by profession and he is residing in Kolkata. Petitioner further submits that there was no dispute between petitioner and the opposite party when she was living in the matrimonial home with her husband. She further submits that all of a sudden she received the summon of the aforesaid matrimonial suit wherein the husband has sought for dissolution of marriage and the said case is pending in the Alipore court.

2. Petitioner submits that petitioner is residing at a distance of 600 k.m. away from Alipore Court and as such it has become very much inconvenient for the petitioner to travel such long distance. In order to contest said matrimonial suit instituted by husband the petitioner has to take over night train journey from Jalpaiguri and then to reach in Kolkata in the morning. She has no accommodation in Kolkata and after hearing she again has to take another over night train journey from Kolkata in order to return to Jalpaiguri. Petitioner further submits that her father died and her mother is old one and it is not possible for her mother to accompany her in her way to Alipore court and in the absence of petitioner there is no one who can takes steps in the said proceeding. From the aforesaid facts it would appear that it is very much troublesome for the petitioner to contest the aforesaid suit at Alipore and considering the balance of convenience and the inconvenience of the parties, which leans in favour of the petitioners/wife, the prayer for transfer may be allowed.

3. Learned counsel appearing on behalf of the opposite party raised strong objection contending that the petitioner frequently use to come Kolkata for her personal occupation and as such there is no necessity to pray for such transfer. Furthermore the opposite party being the medical practitioner, if he is compelled to go to Jalpaiguri allowing such prayer for transfer of proceeding, then the public service rendered by a doctor is supposed to be badly jeopardized. Accordingly he has prayed for rejection of the said prayer for transfer.

4. In this context learned counsel appearing on behalf of the opposite party relied upon Apex Court Judgment in **Anindita Das Vs. Srijit Das** reported (2006) 9 SCC 197 where it was held in paragraph 3,4,5 as follows:-

“3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by this Court. On an average at least 10 to 15 transfer petitions are on board of each court on each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.”

“4. This Court is now required to consider each petition on its merit. In this case the ground taken by the wife is that she has a small child and that there is nobody to keep her child. The child, in this case, is six years old and there are grandparents available to look after the child. The respondent is willing to pay all expenses for travel and stay of the petitioner and her companion for every visit when the petitioner is required to attend the court at Delhi. Thus, the ground that the petitioner has no source of income is adequately met.”

“5. Except for stating that her health is not good, no particulars are given. On the ground that she is not able to come to Delhi to attend the court on a particular date, she can always apply for exemption and her application will undoubtedly be considered on its merit. Hence, no ground for transfer has been made out.”

5. I have considered submission made by both the parties.

6. In **Kulwinder Kaur Vs. Kandi Friends Education Trust and others** reported in **(2008) 3 SCC 659** the Apex Court was pleased to lay down certain broad propositions as to what may constitute a ground for transfer. They are balance of convenience or inconvenience to the plaintiff or defendant or witnesses, convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit, issues raised by the parties, reasonable apprehension in the mind of litigant that he might not get justice in the court, in which the suit is pending, important questions of law involved or a considerable section of public interested in the litigation, interest of justice demanding for transfer of suit appeal or other proceedings etc.

7. In the present case the transfer has been sought for only on the ground of distance. In **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Saha** reported in **2022 Live Law SC 627**, the Apex Court was pleased to held in paragraph 9, as follows:-

“In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife’s convenience which must be looked at while considering transfer.”

8. In the present case petitioner contended that being a staff nurse she is attached to a government hospital and engaged in public service. On the contrary the husband admittedly is a medical practitioner by profession and also engaged in the service of mankind in the society. Considering the social

strata of the spouses, I find that if the aforesaid matrimonial suit is transferred to the court of learned District Judge Malda, then balance of convenience and inconvenience of both the spouses would be taken care of which is the distance factor, and root cause for filing present application.

9. In view of above learned District Judge South 24 Parganas at Alipore is hereby directed to withdraw matrimonial suit no. 2544 of 2022 pending before the court of learned 4th First track court at Alipore and to transmit the same to the court of learned District Judge, Malda within a period of three weeks from the date of communication of the order. The transferee court shall proceed with the suit from the stage where it reached till date. The transferee court shall serve fresh notice upon both the parties intimating next date of hearing before proceeding further with the suit.

10. C.O. 3594 of 2022 is accordingly disposed of. Considering nature of job in which the parties are attached if either of the parties is not able to come to Malda to attend the court on a particular date, the concerned party may make application for exemption and if such application is made, I hope and trust the court below will undoubtedly consider such application on merit.

11. Department is directed to send a copy of this order to the learned District Judge, South 24 Parganas at Alipore and learned District Judge, Malda immediately.

12. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)