

13.1.2023
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Ct. no. 652
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C.O. 3672 of 2022

**Smt. Monalisa Roy nee Apul @ Monalisha Roy
Vs.
Sri Joydeep Paul**

Mr. Debasis Kar
Mr. Arka Tilak Bhadra ...for the petitioner

Mr. Sujeet Kr. Maurya
Mr. Sushil Kr. Maurya ...for the opposite party

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of the Matrimonial suit no. 2076 of 2022 presently pending before the court of learned Additional District Judge, 10th Court, Alipore to the learned Additional District Judge, 1st Court, Barrackpore.

The petitioner contended that the petitioner was married with the opposite party and the marriage took place on 14.11.2016. Petitioner alleged that she was subjected to torture after marriage and as such she has initiated a proceeding being Titagarh Police Station case no. 470 of 2020 under Sections 498A/323/120B of the Indian Penal Code which is now pending before the learned Additional Chief Judicial Magistrate, Barrackpore. The other two proceedings namely M-329 of 2020 under Section 125 of the Code of Criminal Procedure and the Misc. Execution case no. 43 of 2022 initiated by the petitioner herein are also pending before

the court of learned Additional Chief Judicial Magistrate, Barrackpore and the opposite party is contesting all those cases and he is attending Barrackpore court on each and every date fixed by the learned court, where the said two cases are pending. Eventually the opposite party herein has filed aforesaid suit for dissolution of marriage, which is now pending before Alipore Court. The petitioner submits that the Alipore court situates at a distance of about 40 kilometres from the present residence of the petitioner.

The petitioner further submits that she has no source of income of her own and there is none to accompany her for moving from her house to the learned court at Alipore. In such circumstances, the petitioner has prayed for aforesaid transfer.

Learned counsel for the petitioner in support of her contention, has relied upon a Supreme Court judgment reported in Ruchi Rawat Vs. Principal Judge, Family Court Etah & another being Civil Appeal no. 5218 of 2022 and specifically relied upon paragraph 4 of the judgment where court observed that it is well settled that in matrimonial matters, generally, the wife's convenience which must be looked at while considering the transfer.

Learned counsel for the opposite party opposed the prayer for transfer and relied upon a judgment reported in (2006) 9 SCC 197 (Anindita Das vs. Srijit Das) and contended that grounds for transfer as made by the

petitioner herein is not sufficient for transfer and the court should not take leniency because the petitioner has tried to misuse lenient view of the court in this context.

In view of the aforesaid facts and circumstances of the case and that the petitioner is an unemployed lady having no source of income and also considering the distance involved between the two places and that three other proceedings initiated by the petitioner is pending before the Barrackpore court, where the opposite party would be required to attend and that in view of recent judgments passed by the Apex court that in such cases, convenience of the petitioner/wife should be of paramount importance, the prayer made by the petitioner is allowed.

Learned District Judge, South 24 parganas, Alipore is hereby directed to withdraw the Matrimonial suit no. 2076 of 2022 presently pending before the court of learned Additional District Judge, 10th Court, Alipore and to transmit the same to the court of learned District Judge, North 24 parganas, Barasat within a period of three weeks from the date of communication of the order, who in turn will transfer the same to the court of learned Additional District Judge, Barrackpore having jurisdiction to try the same within a period of three weeks thereafter.

The transferee court shall serve fresh notice upon both the parties intimating the next date of hearing before proceeding further with the aforesaid suit.

Liberty is given to the petitioner to pray before the trial court for consolidation of date of the matrimonial suit along with the dates of the other proceedings between the parties pending before Barrackpore court.

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

Accordingly, C.O. 3672 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.)