

S/L 275
16.3.2023
Court No.652
SD

CO 3718 of 2022

Smt. Madhumita Bhattacharya
Vs.
Sri Partha Mukhopadhyay

Mrs. Sohini Chakraborty

...for the Petitioner.

Mr. Victor Mukherjee

...for the Opposite Party.

This is an application under Section 24 of the Code of Civil Procedure at the instance of the petitioner seeking transfer of Matrimonial Suit No.1749 of 2022 from the Court of learned District Judge, South 24 Parganas at Alipore to the Court of learned District Judge, Hooghly at Chinsurah.

The petitioner contended that the petitioner was married with the opposite party on January 17, 2019 under the provisions of the Special Marriage Act. The petitioner alleged that during her stay at her matrimonial house she was kept confined in the house by the opposite party and his family members and she was subjected to physical and mental torture. When such torture became unbearable, she was forced to leave her matrimonial house on November 30, 2019 and since then has taken shelter in her paternal house at Kaliagarh, Hooghly.

She further submits that she is financially dependant upon the opposite party, but the opposite party has not paid any amount of maintenance to her. Finding no other alternative, she has initiated a proceeding under Section 12 of the Protection of Women from Domestic Violence Act

against the opposite party which is pending before the learned Chief Judicial Magistrate, Chinsurah, Hooghly. The opposite party has appeared in the said proceeding and is contesting the same.

All of a sudden the opposite party/husband has filed aforesaid suit for restitution of conjugal rights which is now pending in the court of learned District Judge, South 24 Parganas at Alipore.

Petitioner further submits that the said suit has been filed suppressing all material facts and the petitioner is not in a position to attend the said proceeding at Alipore. The court at Alipore situates at a distance around 80 kms. in one way from her present place of residence and it involves more than two hours journey in one way. She is also not in a position to bear the expenses of hiring a private car on each and every date to attend the said proceeding at Alipore.

The petitioner has alleged that her father died and she is the only child of her parents and her mother has recently diagnosed with hepatitis and as such, she does not have anyone to accompany her to Alipore Court to contest the case. The petitioner further submits that having no independent source of income, she has filed this application with the help of Calcutta High Court Legal Services Committee. Accordingly, she has sought for aforesaid transfer.

Learned counsel appearing on behalf of the opposite party submits that both the parents of the opposite party are suffering from different ailments. He further alleged that the

petitioner/wife has left her matrimonial house at her sweet will without informing anything to anyone on the pretext of urgent need. He further submits, if the prayer for transfer is allowed, the opposite party will face great difficulty in attending the said proceeding at Chinsurah Court, as there is no other member in his family to look after his parents.

He further submits that he has prayed for restitution of conjugal rights and accordingly, the prayer for transfer should not be allowed and instead the wife/petitioner may be directed to reconstitute the matrimonial tie.

Having considered the aforesaid facts and circumstances of the case and the balance of convenience and inconvenience of both the parties and also considering the distance involved between the two places, I find that if the present proceeding is transferred to the court of learned Additional District Judge, Serampore having jurisdiction neither party will face much inconveniences in attending the said proceeding.

Considering the same, learned District Judge, South 24 Parganas at Alipore is hereby directed to withdraw the Matrimonial Suit No.1749 of 2022 from the Court of learned District Judge, South 24 Parganas at Alipore and to transmit the case record to the Court of learned District Judge, Hooghly at Chinsurah 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, Serampore, Hooghly having jurisdiction to try the suit, within a period of three weeks thereafter.

The transferee court shall give fresh notice intimating the next date of hearing upon both the parties before taking up further proceeding of the suit and the transferee court shall proceed with the suit at the stage where it reached till date.

Department is directed to send a copy of this order to the learned District Judge, South 24 Parganas at Alipore as well as learned District Judge, Hooghly at Chinsurah immediately.

With these observations, C.O. 3718 of 2022 is disposed of.

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.)