

S/L 198
02.02.2023
Court No.652
SD

CO 3889 of 2022

Sradhya Dutta
Vs.
Sri Nirupam Dutta

Mr. Pratip Mukherjee
Ms. Rima Banerjee

...for the Petitioner.

Mr. Chittaranjan Chakraborty
Mr. Sumit Banerjee

...for the Opposite Party.

Affidavit of service filed by the petitioner in court today be kept with the record.

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.434 of 2017 along with connected Misc. case from the Court of learned Additional District and Sessions Judge, Baruipur to the Court of learned Additional District and Sessions Judge at Barrackpore, North 24 Parganas.

The petitioner contended that the petitioner was married with the opposite party under the Hindu Marriage Act on 12.6.2016 according to Hindu rites and customs. The petitioner alleged that the petitioner was subjected to physical and mental torture which ultimately forced the petitioner to leave her matrimonial home on 19.10.2016.

Petitioner alleged that as she was meted with brutal mental and physical torture by the opposite party, she was compelled to lodge FIR against her husband and her in laws. Petitioner further stated that soon thereafter the opposite

party has filed aforesaid suit for dissolution of marriage. The petitioner being an unemployed lady has filed an application under Section 125 of the Code of Criminal Procedure which is pending before the court of learned ACJM at Barrackpore and the opposite party is contesting the same attending at Barrackpore Court.

The petitioner further submits that she is suffering from various physical ailments and severity of her illness has curtailed her day to day activities and she has been advised by the doctor for travelling of limited journey owing to her health condition. The petitioner was admitted in Ramkrishna Mission Seba Pratisthan due to cardiac attack with severe anemia and presently she is weak and bed ridden.

She further submits that the Court at Baruipur situates at a distance of 50 kms. from her house and it takes about 2½ hours to make the said journey. The petitioner further submits that being a non-earning lady, she is not in a position to avail for a private car. On the other hand, the opposite party is an able bodied person does not have any restrictions in movement, nor diagnosed any severe ailments unlike the petitioner and for which he can easily travel to Barrackpore Court by train or by car and as such, she has made the aforesaid prayer for transfer.

Learned counsel appearing on behalf of the opposite party raised vehement objection and contended that the petitioner has been attending college university at College Street Kolkata for her higher studies and petitioner's mother

has a house at College Street Kolkata and she has been attending universities regularly. Furthermore, the petitioner has sufficient fund to travel by car from Agarpara to Barrackpore. On the contrary, the opposite party has to travel about 18 railway stations and he has to cover 42 kms. in order to reach Barrackpore Court. Accordingly, he suggests that even if transfer is at all effected then the Sealdah Court would be the convenient one. Accordingly, the opposite party has opposed the prayer of the transfer application.

Having considered the facts and circumstances of the case and that the distance involved between the two places and that the petitioner is suffering from various ailments which she has supported by filing documents as annexure and that the proceeding under section 125 Cr.P.C. initiated by the petitioner is pending before the Barrackpore Court where the opposite party would be required to attend and that in such cases where the husband has filed suit for dissolution of marriage, the convenience of the petitioner is of paramount importance and that it is not in dispute that the husband is an able bodied person and the inconvenience faced by the petitioner being an unemployed lady in travelling to another place for pursuing aforesaid matrimonial suit through public transportation in the socio-economic situation prevailing in the country, is much more than the inconveniences that might be caused to the opposite party/husband, the prayer made by the petitioner is allowed.

Accordingly, learned District Judge, South 24 Parganas at Alipore is hereby directed to withdraw the Matrimonial Suit No.434 of 2017 along with connected misc. case from the Court of learned Additional District and Sessions Judge, Baruipur and to transmit the case record to the Court of learned District Judge, North 24 Parganas at 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 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 the learned District Judge, North 24 Parganas at Barasat immediately.

With these observations, C.O. 3889 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.)