

S/L 199
02.02.2023
Court No.652
SD

CO 3903 of 2022

Nivedita Das (Roy)
Vs.
Somak Roy

Mr. Shibaji Kumar Das
Ms. Rupsa Sreemani

...for the Petitioner.

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

In spite of service, opposite party is not represented.

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.2189 of 2022 from the Court of learned Additional District Judge, 4th Court, Barasat to the Court of learned District Judge, South 24 Parganas, Alipore.

The petitioner contended that the marriage between the petitioner and the opposite party took place on February 5, 2022 according to Special Marriage Act. The petitioner alleged that during her stay at her matrimonial home, she was subjected to physical and mental torture by her in laws on the score of further demand of dowry but she tolerated the same initially. She further alleged on June 1, 2022 the opposite party/husband picked up quarrel over trivial issues and without any rhymes or reasons had physically assaulted the petitioner and abused her with filthy languages. On June 25, 2022 she was again physically assaulted by her husband and other in laws and ultimately she was forcibly driven out from her matrimonial home.

The opposite party in the meantime has filed the aforesaid suit for nullity of marriage which is pending before the learned Additional District Judge, 4th Court at Barasat.

The petitioner also alleged that the opposite party and his father are very desperate persons in the locality and they are threatening the petitioner for granting unconditional divorce to the opposite party. The petitioner further contended that sole motive behind such threat being hurled by the opposite party herein, is to get divorce from the petitioner and thereafter to re-marry. The petitioner contended that due to such threats, the petitioner became extremely frightened and she anticipates any unwanted incident may happen, if she is forced to attend the said court at Barasat.

The petitioner further submits that if the prayer for transfer is allowed, it will not cause any inconvenience to the opposite party because he is financially stable and sound, having sufficient source of income.

The petitioner in this context referred to Section 31 (1) (i), 1 (ii) and 1 (iiia) of the Special Marriage Act and contended that the territorial jurisdiction of such matrimonial suit should always be where the wife ordinarily resides.

Having considered the facts and circumstances of the case and that the distance involved between the two places and that in such cases where the husband has filed the 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, in the socio-economic situation prevailing in the country is much more than inconveniences that might be caused to the opposite party/husband, the prayer made by the petitioner is allowed.

Accordingly, learned District Judge, North 24 Parganas at Barasat is hereby directed to withdraw the Matrimonial Suit No.2189 of 2022 from the Court of learned Additional District Judge, 4th Court, Barasat and to transmit the case record to the Court of learned District Judge, South 24 Parganas at Alipore within a period of three weeks from the date of communication of the order.

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. 2903 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.)