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31.01.2023  
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**In the High Court at Calcutta  
In the Circuit Bench at Jalpaiguri**

**C.O. No. 65 of 2021**

**Koushik De Sarkar  
-Vs.-  
Suranjana De Sarkar**

Mr. Sayan De,  
Ms. Esha Acharya  
...for the petitioner

Mr. Anirban Banerjee,  
Ms. Sriya Basu  
...for the opposite party

Affidavit-in-opposition and affidavit-in-reply  
filed in court today be kept on record.

The petitioner-husband seeks transfer of Matrimonial Suit No. 36 of 2021 and the connected miscellaneous case, bearing Miscellaneous Case No. 3 of 2021, from the Court of the District Judge, Jalpaiguri to that of the District Judge, North 24 Parganas at Barasat. It is contended by the petitioner that, at the behest of the opposite party-wife, at least four criminal cases are pending in the Barasat court, including one under Section 498A of the Indian Penal Code, another under Section 125 of the Code of Criminal Procedure as well as a case under the Protection of Women from Domestic Violence Act. It is contended that although the opposite party-wife is conducting those proceedings in Barasat from the year 2017, no transfer of those proceedings was

ever sought. As such, it is contended that the opposite party-wife cannot claim any disadvantage in attending the civil court at Barasat to contest the civil suit.

Learned counsel appearing for the opposite party-wife submits that the petitioner, who is working with the Armed Forces and presently posted at the Eastern Command, Fort William, Kolkata, can very well come to Jalpaiguri to contest the suit instituted by the opposite party. It is further submitted that the opposite party has a 13 years old male child who is suffering from autism and a 15 years old daughter who is also suffering from Asthma. Moreover, both the children are school-going and, as such, it is extremely difficult for the opposite party to contest the matrimonial suit in Barasat.

Heard learned counsel for the parties. It transpires that several criminal cases, at least four in number, are at present pending at the behest of the opposite party at Barasat. The opposite party-wife has all along been prosecuting those cases. However, only in the year 2021, the opposite party, for the first time, prayed for transfer of the said criminal cases to Jalpaiguri. Upon initially being turned down on technical

grounds, the opposite party renewed her prayer by filing a fresh transfer application subsequently in the year 2022. It transpires that the present transfer application is being contested only to substantiate the prayer of the opposite party-wife to transfer her cases pending at Barasat to Jalpaiguri. Since the opposite party has not taken any step in that regard for 4-5 years, it cannot be said that the opposite party-wife will find it difficult to attend the civil court if the matrimonial suit is transferred to the Barasat court.

Since the petitioner is working with the Armed Forces and presently posted at Kolkata, he might be in difficulty to attend the matrimonial suit at Jalpaiguri regularly. Although the usual presumption, as well-settled by the Supreme Court, is in favour of transfer of suits at the behest of the wife, keeping in view the circumstances of the present case, as indicated above, the prayer of the husband has to be allowed.

Accordingly, C.O. No. 65 of 2021 is disposed of, thereby directing transfer of Matrimonial Suit No. 36 of 2021, along with the connected Miscellaneous Case No. 3 of 2021, pending in the court of the District Judge at Jalpaiguri, to the

court of the District Judge, North 24 Parganas at Barasat.

The Office shall communicate this order to the court of the District Judge at Jalpaiguri as well as the court of the District Judge, North 24 Parganas at Barasat for early compliance of this order.

The records of the aforementioned suit be sent to the court of the District Judge at Barasat.

It is made clear that the District Judge at Barasat shall be at liberty to hear out and decide the case from its present stage by himself and/or to allocate the case to some other competent Additional District Judge in her/his jurisdiction for the purpose of deciding the suit.

It is expected that the suit shall be concluded expeditiously by the transferee court after the records are received by the said court.

There will be no order as to costs.

Urgent certified copies of this order, if applied for, be given to the parties, as expeditiously as possible.

(Sabyasachi Bhattacharyya, J.)