

Ct.
No.
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2023

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

C.O. 113 of 2023
Nazia Zahiruddin
-Versus-
Md. Tanwir Ul Haque

Mr. Jewel Chanda ...For the Petitioner

Mr. Mayank Roy ...For the Opposite Part/Husband

This is an application under Section 24 of the Code of Civil Procedure, wherein the petitioner has sought for transfer of Title Suit No. 75 of 2020 from the Court of learned Civil Judge (Senior Division) at Siliguri to an appropriate Court having jurisdiction in the Judgeship of Alipore at South 24-Parganas.

Petitioner contended that the petitioner is the legally married wife of the opposite party and their marriage was solemnized on 15th March, 2016 according to Mohammedan Rites and Rituals in Kolkata.

Petitioner alleged that during her stay at her matrimonial home she was subjected to physical and mental torture by the opposite party and his family members. She further alleged, owing to the increase of torture and continuous ignorance, she was compelled to move out from her matrimonial home and was forced to take shelter at her parental home.

Thereafter she had given birth to a girl child on 10th March, 2017, who is now aged about six years. She further alleged, after the birth of girl child she again went

to her matrimonial home with a hope to live a happy conjugal life with her husband but again she was subjected to torture by her husband and in-laws for which she was finally compelled to move to her parents' house sometime in the month of December 2017.

Petitioner further submits that having no source of income she was compelled to initiate a maintenance proceeding under Section 125 of the Code of Criminal Procedure, being Case No. ACM 660 of 2020, which is pending before the learned Judicial Magistrate, 3rd Court, at Alipore. She further submits that due to non-payment of maintenance amount she has also initiated an Execution proceeding against the husband/opposite party under Section 125(3) of the Code, which is also pending before the Alipore Court.

Now after receipt of Summon for appearance the petitioner has learnt that the opposite party/husband has filed aforesaid suit for Restitution of Conjugal Rights before the learned Civil Judge (Senior Division), Siliguri, being Title Suit No. 75 of 2020. She submits that she has no source of income and fully dependent on her parents and the distance involves from her present residential house in Kolkata and the Siliguri Court is almost 600 kms. In one way and it takes 12 hours journey. Moreover, petitioner has no relative staying in and around Siliguri, who can help her and it is hardly possible for her to travel along with her minor child to attend the said Court proceeding at regular interval. The parents of the petitioner are old and aged and they are not in a position to accompany her and there is no capable

person in her family to take her along with her minor daughter at Siliguri. She is a young lady of 34 years and as such does not feel secure to attend the Court at Siliguri along with the minor daughter in order to defend the said proceeding.

On the other hand the opposite party/husband is 38 years old and doing a job in Qatar and he should be capable enough to come to Kolkata. Furthermore, the other proceedings are pending in Alipore Court where the opposite party is contesting. Accordingly, she has made the prayer for the aforesaid transfer.

Mr. Mayank Roy. Learned Counsel appearing on behalf of opposite party submits that the husband opposite party has prayed for Restitution of matrimonial tie and as such he should not be compelled to attend the Court at Alipore. He further submits that the petitioner / wife had voluntarily left her matrimonial house and she cannot take advantage of her own wrong.

Having considered the facts and circumstances of the case and that the petitioner is the custodian of a child, who is aged about only 6 years and that the petitioner is unable to maintain herself and that the distance involved between the petitioner's residence at Kolkata and the Siliguri Court is more than 600 kms. in one way and that two other proceedings for maintenance and execution case are pending in Alipore Court where the opposite party would be required to attend, and that the inconvenience caused to a lady in travelling through public transportation along with a baby to another station which is about 600 kms. away, is much more than

the inconveniences that might be caused to the husband / opposite party and that in any case the opposite party / husband, who is working in Qatar if requires to attend the Court will have to come all the way from Qatar, I find that this is a fit case where the prayer made by the petitioner for transfer of the said proceeding is required to be allowed.

In such view of the matter, learned District Judge, Darjeeling is hereby directed to withdraw the Title Suit No. 75 of 2020 pending in the Court of learned Civil Judge (Senior Division) Siliguri, Darjeeling and to transmit the same to the learned District Judge, South 24-Parganas at Alipore within a period of three weeks, who in turn will transfer the same before an appropriate Court having jurisdiction to try the suit within Alipore Judgeship within a period of three weeks thereafter.

The transferee Court shall serve fresh notice upon both the parties before proceeding further with the suit and the transferee Court will proceed from the stage where it reaches till date.

The opposite party / husband will be at liberty to pray for consolidation of dates of the aforesaid proceedings before the concerned Court and in the event of making such prayer for consolidation of dates of the said proceedings, the concerned Court shall consider such prayer in accordance with the case load in the cause list.

Registry is directed to send copy of this order to the learned District Judge, Darjeeling and learned

District Judge, South 24-Parganas at Alipore immediately.

Accordingly, the revisional application, being C.O. 113 of 2023 is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)