

AD-10
Ct No.01
Jalpaiguri
01.02.2023
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**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CO 149 of 2022

Smt. Poulami (Sarkar) Moitra
Vs.
Sri Kaushik Moitra

Mr. Kunaljit Bhattacharjee,
Mr. Alok Sah,
Ms. Panchali Deb Sarkar

Mr. Pritam Roy

...for the petitioner

....for the opposite party

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

The primary ground taken by the petitioner in the
present application under Section 24 of the Code of Civil
Procedure is that the petitioner-wife is staying with her
widowed mother in Jalpaiguri with her minor son who is
studying in Class-V of a school.

It is submitted that the matrimonial suit-in-
question has been instituted by the opposite party-
husband in Siliguri, the conveyance to which is
extremely cumbersome for the petitioner. On the other
hand, it would be much more convenient for the opposite

party to travel to Jalpaiguri in the event the suit is transferred to Jalpaiguri.

That apart, the petitioner-wife has taken out an application under Section 125 of the Code of Criminal Procedure which is at present pending in Jalpaiguri. It is contended that despite the opposite party-husband proceeding with his suit in Siliguri, he is repeatedly avoiding service and appearance in the proceeding in Jalpaiguri under Section 125 of CrPC, thereby causing much hardship to the petitioner and her child.

Learned counsel appearing for the opposite party-husband submits that the petitioner-wife has two residences and has ample accommodation to reside near Siliguri as well. It is by choice that the petitioner is residing at Jalpaiguri and, as such, the petitioner is not entitled to transfer as prayed for.

Such contention is controverted by learned counsel for the petitioner.

Be that as it may, since affidavits have not been directed, the allegations made in the Section 24 application are deemed to be denied. However, the allegations being levelled by the opposite party against the petitioner cannot be taken on record at this juncture.

Even on a prima facie perusal of the application, it is evident that the distance between Jalpaiguri and Siliguri, the places from where and to where the transfer is sought, is minimal, that is, only about 45 kilometers.

Moreover, the shifting of the suit of the husband from Siliguri to Jalpaiguri would not increase the convenience for the petitioner much on the ground that she is residing in Jalpaiguri with her minor son and mother.

As regards the pendency of the Section 125 CrPC application in Jalpaiguri, this is not the appropriate forum to ensure appearance of the opposite party-husband in the said proceeding.

It will be open to the petitioner in any event to take appropriate steps before the court of the Magistrate where the proceeding under Section 125 CrPC is now pending to ensure the appearance of the opposite party husband there. However, there is no scope of transfer of the matrimonial suit on such ground in the instant case.

Accordingly, CO 149 of 2022 is dismissed on contest without any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)