

Ct. No.
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**03.07
2024**

**IN THE CIRCUIT BENCH OF CALCUTTA
HIGH COURT AT JALPAIGURI
Civil Revisional Jurisdiction**

**C.O. 13 of 2024
Moumita Barman Biswas
-Versus-
Nitish Kumar Barman**

**Mr. Subham Ghosh
Mr. Mayank Roy
Mr. Sourav Lohani** **...For the Petitioner**

**Mr. Sudip Guha
Mr. Sandip Guha Roy
Mr. Snanda Paul** **...For the Opposite Party**

Affidavit-of-service filed on behalf of the petitioner is taken on record. Both the parties are represented.

This is an application under Section 24 of the Code of Civil Procedure, wherein the petitioner has sought for transfer of Matrimonial Suit No. 110 of 2023 pending before learned District Judge, Cooch Behar to the Court of the learned Additional District Judge, at Siliguri.

It is submitted that the marriage between the parties was solemnized on 25th February, 2005. It is further submitted that the petitioner was not provided with sufficient food and she was neglected by her in-laws while she was pregnant with a child. Petitioner further submits that thereafter two daughters were born due to said wedlock, and they are presently school going and under the custody of the petitioner, who has to incur

entire expenses for their upbringing. It is further alleged on behalf of the petitioner that on 5th July, 2017 she was forced to leave her matrimonial home along with two daughters, as the opposite party and his family members ousted them for insufficient payment of dowry. She further submits that finding no other alternative, she started to work at ASG Eye Hospital, situated at Siliguri, in order to earn livelihood for herself and her minor children and presently she is residing at Siliguri near her workplace.

After eighteen years of the marriage, all on a sudden, the opposite party herein/husband filed the aforesaid suit, seeking dissolution of marriage in the Court of learned District Judge, Cooch Behar. She further submits that it is very difficult for her to attend the Court at Cooch Behar situated at a distance of 135 kms. from her residence in one way and she is facing difficulty in defending the said proceeding at Cooch Behar Court as she has none to look after her children. Her counsel further contended that in the prevailing socio-economic paradigm, wife's convenience must be looked at while considering such prayer for transfer in matrimonial proceedings, specially when husband has unilaterally sought for dissolution of marriage before a Forum at his own choice. Accordingly, petitioner has

prayed for aforesaid transfer.

To buttress the contention of the petitioner, learned Counsel relied on a decision of the Hon'ble Apex Court in the case of *N.C.V. Vs. A.S. Saravana Karthik Sha*, reported in **2022 LiveLaw (SC) 727**.

Learned Counsel appearing on behalf of the opposite party vehemently opposed the prayer made on behalf of the petitioner contending that the opposite party/husband presently working in a private concern and earns only Rs. 6,000/- per month and it would be equally difficult for him to attend the Court at Siliguri from Cooch Behar, if the proposed transfer is allowed by the Court. He further submits that the petitioner/wife has her own paternal house at Cooch Behar and it would not be difficult for her to attend the proceeding at Cooch Behar Court. He further submits that a criminal proceeding under Section 498A of the IPC initiated by the petitioner herein, is also pending before the Court at Cooch Behar where the petitioner would be required to attend. Accordingly, he has prayed for rejection of the prayer for transfer as made by the petitioner.

I have considered the submissions made on behalf of the parties. In view of the facts and circumstances of the case and that the petitioner is bringing up two minor children, who are school going

and that she has to earn livelihood for herself and her children from an establishment situated at Siliguri and that in such cases convenience of the wife is of paramount importance as decided in catena of judgements and that the inconvenience that might be faced by a female, for pursuing her matrimonial suit filed by husband in the Court at Coochbehar is much more than the inconvenience that might be faced by the husband, if the transfer is effected, I find that the prayer made by the petitioner is worthy to be allowed in the present facts and circumstances of the case.

The application, being C.O. 13 of 2024 is accordingly allowed.

The learned District Judge, Coochbehar is hereby directed to withdraw the case record of Matrimonial Suit No. 110 of 2023 from his file and to transmit the same to the office of learned District Judge, Darjeeling within a period of three weeks from the date of communication of the order, who in turn will transmit the same to the Court of learned Additional District Judge at Siliguri having jurisdiction to try the suit, within a period of two weeks thereafter.

The transferee Court shall continue with the proceeding from the stage where it reached till date and shall give fresh notice intimating the next date of hearing

upon both the parties before taking up further proceeding.

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

(Ajoy Kumar Mukherjee, J.)