

IN THE HIGH COURT AT CALCUTTA

Circuit Bench at Jalpaiguri

Civil Revisional Jurisdiction

Appellate Side

C.O.No.72 of 2022

Anita Saha Bhadra

VS

Rajib Bhadra

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Partha Pratim Sarkar,

Mr. Sudip Guha,

Mr. Sandip Guha Roy,

----- for the petitioner.

Hearing concluded on :

10.01.2024

Judgment On :

25.01.2024

M.V. Muralidaran, J.:

This petition has been filed by the petitioner under Section 24 of the Code of Civil Procedure, 1908 to transfer the Matrimonial Suit No.461 of 2021 pending on the file of the learned Additional District Judge, Siliguri,

Darjeeling to the file of the learned Additional District Judge, Dinhata, Cooch Behar.

2. Heard learned counsel for the petitioner. None appeared on behalf of the respondent when the matter is taken up for hearing on 10.01.2024. After hearing the learned counsel for the petitioner, the matter was reserved for orders.

3. The learned counsel for the petitioner submitted that the marriage between the petitioner and the respondent was solemnized on 18.1.2019 as per Hindu rites and customs. After marriage, the petitioner went to her matrimonial house and started residing with the respondent as husband and wife. After few days, the respondent and his family members demanded the petitioner to bring money from her father's house. When the petitioner refused to bring the money, they tortured her both mentally and physically. Even the respondent assaulted the petitioner and took her to Dinata Chowpathy and the respondent left the spot. Thereafter, the petitioner was compelled to take shelter at her father's house where also the respondent came and assaulted the petitioner.

4. The learned counsel for the petitioner further submitted that the petitioner is an unemployed person and she had no source of income for her livelihood and she is spending her life with great hardship. Finding no other alternative, on 25.1.2021, the petitioner lodged a police complaint before the Dinhata Women Police Station and the same was registered under Section 498A IPC. The petitioner had also initiated maintenance proceedings under Section 125 Cr.P.C. before the learned Additional Chief Judicial Magistrate, Dinhata-II in Miscellaneous Case No.66 of 2021.

5. The learned counsel for the petitioner would submit that the petitioner came to know that the respondent had filed Matrimonial Suit No.461 of 2021 before the learned Additional District Judge, Siliguri and she had received summons to appear on 14.6.2022.

6. According to the learned counsel for the petitioner, the petitioner is residing at Jambari, Dinhata District, Cooch Behar and the proceedings initiated by the petitioner are pending before the Dinhata Court and the respondent had appeared and is contesting the same. However, with an ulterior motive, the respondent had filed Matrimonial Suit No.461 of 2021 before the learned Additional District Judge, Siliguri which is far away from

her place of residence and requires about 5 to 6 hours travel one way. That apart, the respondent and his family members are residing at Siliguri and they are very influential persons in the locality. They are threatening the petitioner with dire consequences. It is virtually impossible for the petitioner to contest the Matrimonial Suit No.461 of 2021 by attending in the Court of the learned Additional District Judge, Siliguri for her safety and security. Therefore, in order to meet the ends of justice, the said suit be transferred to the file of the learned Additional District Judge, Dinhata.

7. This Court considered the submissions made by the learned counsel for the petitioner and also perused the materials available on record.

8. Admittedly, the petitioner is residing at Dinhata where two proceedings under Section 498A IPC and Section 125 Cr.P.C. are pending at the instance of the petitioner. The respondent had filed Matrimonial Suit No.461 of 2021 under Section 9 of the Hindu Marriage Act in Siliguri. According to the petitioner, the distance between the residential house of the petitioner at Dinhata and Siliguri is about 200 kilometers. That apart, the petition averments clearly indicate that the petitioner is financially weak and

is not in a position to appear in the Court at Siliguri to contest the suit filed by the respondent.

9. As could be seen from the records, despite opportunities granted to the respondent to file affidavit-in-opposition, he has not filed any affidavit-in-opposition. This clearly shows the slackness of the respondent in defending the present petition.

10. Since the distance between the residential house of the petitioner at Dinhata and Siliguri is about 200 kilometers, definitely, the petitioner requires to stay at night at Siliguri to conduct the case. It is to be pointed out that the convenience of the wife would be a major factor while considering the application for transfer.

11. It is settled law that while going into the merits of a transfer application, Courts are required to give more weightage and consideration to the convenience of the female litigants and transfer of legal proceedings from one Court to another should ordinarily be allowed taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships. In such type of matters, the

convenience of the wife is to be preferred over the convenience of the husband.

12. In *N.C.V.Aishwarya v. A.S.Saravana Karthik Sha*, (2022) SCC Online SC 1199, the Hon'ble Supreme Court held that in matters where matrimonial proceedings come up for consideration under Section 24 of the CPC ends of justice would be met if the convenience of the wife is taken into consideration.

13. In *N.C.A.Aishwarya*, supra, the Hon'ble Supreme Court held thus:

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioral pattern, their standards of life prior to the marriage and subsequent thereto and the circumstances of both the parties in

eking out their livelihood and under whose protective umbrella they are seeking their sustenance to like.

Given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife convenience which must be looked at while considering transfer.”

(underlining supplied)

14. The principle governing the proceedings under Section 24 CPC is that the convenience of the wife is to be preferred over the convenience of the husband. In the instant case, as stated supra, the petitioner-wife is residing at Dinhata, which is 200 kilometers way from Siliguri.

15. In the light of the above, this Court is of the view that the petitioner has established her case for transfer of the Matrimonial Suit No.461 of 2021 pending on the file of the learned Additional District Judge, Siliguri to the file of the learned Additional District Judge, Dinhata. Accordingly, the Matrimonial Suit No.461 of 2021 pending on the file of the Additional District Judge, Siliguri is ordered to be transferred to the file of the Additional District Judge, Dinhata.

16. In the result, CO 72 of 2022 is allowed. There shall be no order as to costs.

(M.V. Muralidaran, J.)