

S/L 186
31.01.2023
Court No.652
SD

CO 2913 of 2022

Smt. Manali Nag
Vs.
Sri Supriyo Nag

Mr. Pinaki Datta
Ms. Jayashree Saha

...for the Petitioner.

Mr. Samrat Choudhury
Mr. Suvadeep Sen

...for the Opposite Party.

Affidavit-in-opposition and affidavit-in-reply filed by the parties are taken on record.

This is an application under Section 24 of the Code of Civil Procedure at the instance of the petitioner seeking transfer of Matrimonial Suit No.434 of 2016 pending before the Court of learned Additional District Judge, 2nd Fast Track Court, Barrackpore, North 24 Parganas to any Court at Paschim Medinipur.

The petitioner contended that the petitioner was married with the opposite party according to Hindu rites and customs on 25.5.2011 and they are blessed with a male child aged about 10 years who is presently staying with his mother and he is studying in a school at Paschim Medinipur.

The petitioner submits that she was subjected to various criticism during her stay at matrimonial house and the petitioner/wife was allegedly compelled to leave her matrimonial home along with her minor son and having no other alternative she is residing at the petitioner's parent's

home and both of them are surviving on the mercy of her parents.

The petitioner submits that opposite party has filed the aforesaid suit for dissolution of marriage which is presently pending in the court of learned Additional District Judge, 2nd Fast Track Court, Barrackpore, North 24 Parganas.

The petitioner further submits that the petitioner presently being a helpless lady aged about 42 years and also suffering from various health ailments, which made her mentally anxious and physically ill. She is also custodian of 10 years old child and distance involved between the present place of residence and the court at Barrackpore is about 290 kms. in both way journey. She is facing lot of inconvenience in making journey through public transportation and her parents are senior citizens and also suffering from serious ailments and they are not in a position to accompany her and therefore, the pendency of the matrimonial suit at Barrackpore Court causes great hardship to the petitioner.

She further alleged that she is not receiving any amount of maintenance either for herself and/or for her son from the opposite party. Accordingly, she has sought for aforesaid transfer.

Learned counsel appearing on behalf of the opposite party raised objection by filing affidavit-in-opposition and contended that this matrimonial suit was earlier decreed ex parte and the petitioner/wife contested the misc. case in the

court at Barrackpore for setting aside the ex parte decree for five years and she did not face any inconvenience to proceed with the said misc. case. Now, all on a sudden, she has made the aforesaid prayer for transfer. Moreover, she has alternative accommodation at Birati and as such, there is no justification in seeking aforesaid transfer by the petitioner.

In reply, learned counsel appearing on behalf of the petitioner submits that the said accommodation is owned by her mother and she has stated in her evidence that she is residing in Paschim Medinipur. She further replied that the proceeding under Order IX Rule 13 for setting aside the ex parte decree was in connection with the aforesaid suit and for which she had no other alternative but to attend the said court for setting aside the ex parte decree.

Learned counsel appearing on behalf of the opposite party further submits that his mother is aged about 70 years and suffering from different diseases and he is only person who is looking after his aged mother.

In support of his contention, he has relied upon a Supreme Court judgment in the case of *Preeti Sharma vs. Manjit Sharma* reported in 2005 (11) SCC 535 and contended that merely because the petitioner is a lady does not mean she cannot travel that distance.

I have considered the submissions made by the parties.

Considering the facts and circumstances of the case and that the distance involved between the two places and

that the petitioner is a custodian of a child aged about 10 years who is a school going and in such a case where the husband has filed a suit for dissolution of marriage, the convenience of the petitioner is of paramount importance and that inconvenience caused to the wife/petitioner in travelling to another place through public transportation for pursuing matrimonial suit is much more than the inconvenience caused to the husband/opposite party, the prayer made by the petitioner is allowed.

I am also of the opinion that the judgment cited by the opposite party is not applicable since in the said case no substantial ground for transfer had been made out.

On the contrary in a recent judgment in **NCV Aishwarya Vs. A.S. Saravana Karthik Sha**, reported in **(2022) Live Law (SC) 627**, Apex Court held

“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 behavioural pattern, their standard 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 life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife’s convenience which must be looked at while considering transfer.”

Accordingly, learned District Judge, North 24 Parganas at Barasat is hereby directed to withdraw the Matrimonial Suit No.434 of 2016 from the Court of learned Additional District Judge, 2nd Fast Track Court, Barrackpore and to transmit the case record to the Court of learned

District Judge, Paschim Medinipur within a period of three weeks from the date of communication of the order.

The transferee court shall give fresh notice intimating the next date of hearing upon both the parties before taking up further proceeding of the suit and the transferee court shall proceed with the suit at the stage where it reached till date.

Department is directed to send a copy of this order to the learned District Judge, North 24 Parganas at Barasat as well as the learned District Judge, Paschim Medinipur.

With these observations, C.O. 2913 of 2022 is disposed of.

There will be no order as to costs.

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

(Ajoy Kumar Mukherjee, J.)