

Serial No. 24
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Tr.P.(C) No. 1 of 2022

Date of Decision: 24.03.2023

Smti. Bakyntiew Mawkhiew Vs. Shri. (Dr.) Confirm Suresh Bareh

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. N.G. Shylla, Adv.

For the Respondent(s) : Mr. D. Pachiang, Adv.

i) Whether approved for reporting in Yes/No
 Law journals etc.:

ii) Whether approved for publication Yes/No
 in press:

Oral:

1. This is an application praying for transfer of Divorce Suit No. 1 of 2022, pending in the Court of District Judge, East Jaintia Hills, Khliehriat, to the Court of the District Judge, East Khasi Hills, Shillong.

2. Ms. N. G. Shylla, learned counsel for the petitioner has submitted that, the respondent who is the husband, had filed a suit for dissolution of marriage under Section 10(1)(ix)(x) of the Indian Divorce Act, 1869, being Divorce Suit No. 1(T) of 2022, and that the matter is yet to proceed. She further submits that the grounds for transfer by the petitioner, firstly, is that, she is permanently residing in East Khasi Hills District, Shillong, and is serving as an Assistant Professor at a private nursing school at Laitkor, Shillong. Secondly, she submits the petitioner's 2(two) minor daughters born out of the wedlock aged 9 and 7 respectively are with her, who need her care on a daily basis. As such she submits, it would be difficult for the petitioner to undertake frequent journeys to Khliehriat, to attend the case, as this would put her in a very difficult position considering her professional and personal commitments.

3. It is also submitted that, the respondent is financially comfortable and well placed, and will have no difficulty to travel to Shillong to attend the matter, even though his place of posting is at Khliehriat, East Jaintia Hills District. She therefore prays that; orders be passed considering the case of the petitioner, for transfer of the Divorce Suit to the Court of the District Judge at Shillong.

4. Mr. D. Pachiang, learned counsel for the respondent submits that as per Section 3(3), the Divorce Suit had been filed by the respondent in

the Court of the District Judge, East Jaintia Hills District, as the marriage was solemnized in that district. He further submits that, being a Senior Medical Health Officer, the respondent cannot leave station and even has to take permission from the Deputy Commissioner for station leave. In support of his submissions, the learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court, in the case of *Kalpana Deviprakash Thakar (Smt) vs. Dr. Deviprakash Thakar* reported in *(1996)11 SCC 96*, wherein the prayer for transfer by the wife against the husband, who is a medical practitioner was rejected. He therefore prays that, the Transfer Petition be rejected.

5. I have heard learned counsels for the parties. The fact that the minor daughters are with the petitioner presently, and that she has to care for them, has not been disputed, as also, the fact that, the petitioner is employed in a private nursing school situated in Laitkor, Shillong, East Khasi Hills District, and that, she is residing in the district at Laitdiengsai Village, Smit, which is in the outskirt of Shillong.

6. The reasons as noted above, in the considered view of the Court are good and sufficient grounds, inasmuch as, the petitioner will be put to great difficulty if she has to attend the Court at Khliehriat frequently. This is because apart from the travel distance, it will also make it necessary for the petitioner to obtain leave from her employment in the private concern,

which may jeopardize her job, coupled with the fact that, her minor children will have to be left in someone else's care during her absence. The respondent on the other hand, is serving as a Senior Government Doctor, and no doubt, though saddled with heavy responsibilities is in a much better position than the petitioner in the circumstances. The decision relied upon by the counsel for the respondent will be of no assistance, as it is based on a different set of facts altogether, where in such matters, Courts have to examine and decide a case on the facts surrounding the particular case before it.

7. Accordingly, this Transfer Petition is allowed, and it is ordered that, the Divorce Suit No. 1(T) of 2022, shall stand transferred to the Court of the District Judge, East Khasi Hills District, Shillong, who is to take up the matter for disposal.

8. Matter stands disposed of, however, with no order as to costs.

9. Registry to send a copy of this order to the Court of the District Judge, East Jaintia Hills District, for transmission of the records to the Court of District Judge, East Khasi Hills District, Shillong, within 4(four) weeks from today.

10. Parties put to notice to appear before the Court of the District
Judge, East Khasi Hills District, Shillong on 8th May, 2023 at 10:30 AM.

Judge

Meghalaya
24.03.2023
"D.Thabab-PS"

