

GAHC010032452021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Tr.P.(C)./9/2021

MRS. JOGITA THAKURIYA
D/O SHRI SANATAN THAKURIYA, R/O VILL-CHEDANI, P.O.-RAMPUR, P.S.-
SARTHEBARI, DIST-BARPETA, ASSAM, PIN-781312

VERSUS

CHANDAN DAS
S/O SHRI BHOLARAM DAS, R/O VILL-BAHANA, P.O.-MONAKUCHI, P.S.-
HAJO, DIST-KAMRUP(R), ASSAM, PIN-781104

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : MR. DITUL DAS

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

22.03.2023

Heard Mr. N. A. Mazarbhuiya, learned counsel for the petitioner. Also heard Mr. D. Das, learned counsel for the respondent husband.

2. The present application is filed by the petitioner wife under Section 24 of

the Code of Civil Procedure, 1908, for Transfer of matrimonial proceedings, initiated by respondent husband being F.C. (Civil) Case No. 251/2020, from the Court of learned Principal Judge, Family Court, Kamrup (Metropolitan), Guwahati to the Court of learned Family Court at Barpeta

3. The learned counsel for the petitioner has projected that the marriage of the petitioner was solemnized with the respondent on 18.04.2018. After few days from the date of marriage there has been serious turmoil between their relationship and the respondent as well as his family members had mentally tortured the petitioner by constantly demanding dowry. In the meantime, a male child was born from their wedlock who is now 3 ½ years old. The sole respondent did not take care of the petitioner and their only child, for which the petitioner had to go back to her parental house for nursing the baby boy and to pursue her studies and now the respondent with an intention to cover up all his misdeeds has instituted proceeding being F.C.(Civil) Case No. 251/2020 in the Court of learned Principal Judge, Family Court, Kamrup at Guwahati for a decree for restitution of the conjugal life.
4. The learned counsel for the petitioner submits that it will be a serious inconvenience for the petitioner to appear and contest the case pending before the learned Principal Judge, Family Court, Kamrup at Guwahati as she is having a minor son aged about 3 ½ years as well as she is depended only her aged and ailing parents.

The learned counsel for the petitioner further contends that for the purpose of determination of the suit, the parents of the petitioner shall be vital witnesses in her support. As they are very aged and now suffering

from various illness, it will be difficult on their part to come to Guwahati and depose in her favour. Thus, if the proceeding pending before the learned Principal Judge, Family Court, Kamrup at Guwahati, is allowed to continue, she will suffer serious pre-judice and inconveniences.

It is the further contention of the learned counsel for the petitioner that the family member of the respondent husband has ill-treated her and she is having serious apprehension that they may repeat the same, if she comes to attend the proceeding at Guwahati and for which it is not possible for her to travel on each and every date to attend the Family Court proceedings at Guwahati.

5. Per contra, Mr. Das, learned counsel representing the respondent husband while seriously objecting the transfer submits that the husband himself is not keeping well and he is having serious neurological problem and is under treatment. In support of such contention, Mr. Das, learned counsel relied upon a certificate issued by the competent authority of the Gauhati Medical College and Hospital, annexed as Annexure-B in the affidavit-in-opposition filed by the husband.

Mr. Das, learned counsel further contends that the respondent husband is having serious apprehension of threat, if the matter is transferred to the Court of learned Family Court at Barpeta inasmuch as on earlier occasion, the family members of the petitioner wife attempted to assault the respondent husband and accordingly he lodged an F.I.R. before the Officer-in-Charge of Dispur Police Station which was registered as Dispur P.S. Case No. 558/2020 on 25.02.2020. Therefore, he objects such transfer of the present petition.

6. This Court has given anxious consideration to the submissions made by the learned counsel for the parties.
7. By now it is well settled that in a matrimonial transfer petition, for the purpose of transfer, basically it is seen the comparative conveniences and inconveniences of the parties irrespective of whether it is husband or wife. There is no dispute that both the learned Principal Judge, Family Court, Kamrup (M) at Guwahati as well as Principal Judge, Family Court, Barpeta are having jurisdiction to entertain the suit in question. Therefore, this Court is to consider on the basis of material available on record and the pleadings made by the parties whether this is a fit case to be transferred as prayed by the petitioner wife.
8. From the pleadings it is established and also not denied that the child out of the wedlock, aged about 3 ½ years, is staying with the petitioner wife and that the petitioner wife is having no independent income. Therefore, this Court is of the view that travelling from Barpeta to Guwahati along with the 3 ½ years child on each and every date of trial shall definitely be an inconvenience so far it relates to the petitioner wife as well as the same will have an additional financial burden on her.
9. At the same time, the contention of the respondent husband that due to his neurotic problem he is not in a position to travel, also need to be considered. From the certificate relied on by the respondent husband in support of his illness, it is reflected that he was treated as out-door patient in the hospital on 14.10.2022. It is also reflected from the certificate that Doctor advised him to avoid forward bending, lifting heavy weight and prolonged standing. The said certificate which was issued on 21.10.2022

also reflects that the patient is fit to resume his duties. In that view of the matter, this Court cannot conclude beyond such certificate that he is not in a position to travel from Guwahati to Barpeta.

10. Though the petitioner wife has expressed apprehension of physical harassment, however, no strong ground for such apprehension is disclosed in the pleading except allegation of ill treatment and demand of dowry.
11. Coming to the third ground urged by the petitioner wife that her parents are aged and ailing and her apprehension that it may be difficult for them to come and depose, finds support from this Court as the same cannot be discarded on the basis of material available on record.
12. Balancing the inconveniences, this Court is also of the view that it will be more difficult and inconvenient for the petitioner wife to contest the matrimonial case before the learned Court of Principal Judge, Family Court, at Kamrup (M), Guwahati and will have additional financial burden of travel from Barpeta to Guwahati i.e. a distance of more than 110 KM. Accordingly, taking note of the matter in entirety, the present petition is allowed by transferring the case pending in the Court of learned Principal Judge, Family Court, Kamrup, Guwahati to the Court of learned Principal Judge, Family Court at Barpeta.
13. The learned Principal Judge, Family Court at Kamrup (M), Guwahati, shall transmit the record of F.C. (Civil) Case No. 251/2020, to the Court of learned Principal Judge, Family Court, Barpeta, Assam.
14. The parties shall appear before the learned Court of Principal Judge, Family Court, Barpeta, Assam on 28.04.2023.

15. Registry to communicate this order to the Court of learned Principal Judge, Family Court at Kamrup (M), Guwahati as well as the Court of learned Principal Judge, Family Court, Barpeta, Assam.
16. At this stage, Mr. Das, learned counsel for the respondent husband submits that the respondent may be allowed to represent through lawyer. This Court in a transfer petition cannot decide such issue. However, the respondent is always at liberty to make such application before the Court of learned Principal Judge, Family Court, Barpeta, Assam after transfer and if such application is filed, the learned Principal Judge, Family Court, Barpeta may consider the same in terms of the law in this regard.

JUDGE

Comparing Assistant