

GAHC010232802022



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

Case No. : Tr.P.(C)/114/2022

ANITA CHAKRABORTY
W/O- SUKALYAN CHAKRABORTY, D/O- SAPAN CHAKRABORTY, R/O-
STATION ROAD, AKALOBO GOLI, WARD NO. 5, P.O. AND DIST. GOLAGHAT,
ASSAM, PIN- 785621.

VERSUS

SUKALYAN CHAKRABORTY
S/O- LATE SUNIL KUMAR CHAKRABORTY, R/O- HOUSE NO. 69, HINDU
MILAN MANDIR ROAD, NEAR PRANAB VIDYAPITH HIGHER SECONDARY
SCHOOL, RAILWAY BAZAR COLONY, DIMAPUR, NAGALAND, PIN- 797112.

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : MR. D P BORAH

- B E F O R E -

HON'BLE MR. JUSTICE DEVASHIS BARUAH

14.06.2023

Heard Mr. M. Dutta, the learned counsel for the petitioner and
Mr. D. P. Borah, the learned counsel for the respondent.

2. By this application under section 24 of the Code of Civil

Procedure, 1908, the petitioner who is the estranged wife of the respondent is seeking transfer of matrimonial proceedings being Divorce Case No.71/2022 from the Court of learned Principal Judge, Family Court, Dimapur, Nagaland to the Court of learned District Judge, Golaghat on the ground that the petitioner would have to travel a distance of 90 kms from her parental home to participate in the proceedings. It is also submitted that two proceedings has been initiated by the petitioner in the Court at Golaghat being proceedings under Section 125 of the Code and the other is a complaint case filed under Section 406 of the Code. It is also submitted by the learned counsel for the petitioner that in both the cases, the respondent is participating.

3. This Court on the basis of the said application had issued noticed on 18.11.2022 and stayed further proceedings in Divorce Case No.71/2022 pending in the Court of the Principal Judge, Family Court, Dimapur, Nagaland.

4. I have heard the learned counsels for both the parties.

5. It has been admitted at the Bar that there is no Family Court established in terms with Section 3 of the Family Court Act, 1984 in the district of Golaghat and the divorce proceedings under the Hindu Marriage Act, 1955 are taken up by the Court of the District Judge at Golaghat. Under such circumstances, the embargo under Section 13 of the Family Court, 1984 which stipulates the mandatory necessity of the appearance of the parties before the Family Court is not applicable to the matrimonial proceedings before the District Judge at Golaghat save and except if the court so directs. Further as the

proceedings before the District Judge at Golaghat are conducted as per the provision of the Code of Civil Procedure, 1908, it is only at the stage of cross-examination that a party has to be physically present in the said court or before the Commissioner.

6. In the backdrop of the said submission, this Court therefore needs to take into consideration as what inconvenience would be caused to the parties, if the matrimonial proceedings are allowed to be continued before the Court of the Principal Judge, Family Court, Dimapur, Nagaland. As the embargo which is being imposed under section 13 of the Family Courts Act, 1994 is not applicable before the Court of the District Judge at Golaghat, the respondent can very well participate in the said proceedings through a legal practitioner and it is not required for him to appear on each and every date save and except when directed by the Court wherein the said divorce proceedings are pending or to face the cross-examination. On the other hand, in the proceedings before the Court of the Principal Judge, Family Court, Dimapur, Nagaland, the parties are required to appear in person, though they may be entitled to seek the assistance of Amicus Curiae.

7. Taking into consideration that the petitioner has expressed difficulties in her participation in the proceedings at Dimapur as she is a lady having no source of income and the convenience and inconvenience being taken into consideration, this Court is of the opinion that ends of justice would be met if the petitioner's prayer for transfer of the proceedings from the Court of the Principal Judge, Family Court, Dimapur, Nagaland to the Court of learned District

Judge, Golaghat is allowed.

8. Accordingly the proceedings in Divorce Case No.71/2022 is transferred from the Court of the Principal Judge, Family Court, Dimapur, Nagaland to the Court of the learned District Judge, Golaghat.

9. The Court of the Principal Judge, Family Court, Dimapur, Nagaland is directed to forthwith transfer the records to the Court of learned District Judge, Golaghat.

10. With the above observations, the instant petition stands allowed and disposed of.

11. The parties shall appear before the Court of the District Judge, Golaghat on **28.07.2023** and on which date the petitioner shall file her written statement without fail.

12. Registry is directed to intimate both the courts below about this order.

13. The interim order passed earlier stands vacated.

J U D G E

Comparing Assistant