

GAHC010042912024



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

Case No. : Tr.P.(C)/22/2024

SAGARIKA PAUL
W/O- SRI RUPAK SARKAR,
D/O- SRI JAGADISH CHANDRA PAUL
R/O- HOUSE NO. 68, KALIBARI ROAD,
SUBHASH PALLY, WARD NO. 2,
LUMDING, P.O. AND P.S.- LUMDING,
DIST.- HOJAI, ASSAM.

VERSUS

RUPAK SARKAR
S/O- LATE NIRANJAN SARKAR,
R/O- OPPOSITE DARRANG COLLEGE GIRLS HOSTEL GATE,
BYE LANE NO. 3, TEZPUR,
P.O. AND P.S.- TEZPUR,
DIST- SONITPUR, ASSAM
PIN-

Advocate for the Petitioner : MR. N K KALITA

Advocate for the Respondent : MR. S K SINGH

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

03.04.2024

Heard Mr. NK Kalita, the learned counsel appearing on behalf of the petitioner and Mr. A Ganguly, the learned counsel appearing on behalf of the respondent.

2. This is an application under Section 24 of the Code of Civil Procedure, 1908 (for short, the Code) for transfer of Title Suit (M) No.57/2023 pending in the Court of the learned District Judge Sonitpur at Tezpur to the Court of the learned District Judge, Hojai at Sankardev Nagar.

3. The brief facts of the case are that the petitioner and the respondent are husband and wife and they got married on 01.02.2018 as per Hindu customs and rites at Dutta Bhawan, Lumding and after solemnization of their marriage they started their matrimonial life at Tezpur.

4. Certain disputes arose between the parties which led the petitioner to leave her matrimonial house at Tezpur and take shelter at her paternal house at Hojai. Thereafter, the petitioner filed a complaint case for recovery of her streedhan articles from the house of the respondents. The said complaint case was registered as C.R. Case No.933/2022 under Sections 406/34 IPC before the learned Chief Judicial Magistrate, Hojai and the said case is still at the evidence stage and the next date fixed before the learned Trial Court is on 05.04.2024.

5. Thereupon, the petitioner being a lady and having no source of income

filed an application seeking maintenance under Section 125 Cr.P.C., before the learned Chief Judicial Magistrate, Hojai which was registered and numbered as MR Case No.346/2022 and the said proceeding is also at the stage of evidence and the next date fixed before the learned Trial Court is on 18.04.2024 for evidence.

6. Subsequently, the respondent had filed a petition for divorce under section 13 1 (i-a) of the Hindu Marriage Act, 1955 seeking divorce from the petitioner alleging *inter alia* that the petitioner had treated him with cruelty. The said petition was registered and numbered as Title Suit (M) No.57/2023 and is pending before the learned District Judge, Sonitpur at Tezpur. The petitioner received the summons of the said case on 19.02.2024. Hence the present application under Section 24 of Code of Civil Procedure praying for transfer of the proceedings from the Court of learned District Judge Sonitpur at Tezpur to the Court of the learned District Judge, Hojai at Sankardev Nagar on the ground of inconvenience of the petitioner to travel to Tezpur due to fear and medical condition. Further, the petitioner is facing acute financial problem and has no source of income and is totally dependent on her parents.

7. On the basis of the aforesaid grounds, the instant application was filed and this Court vide an order dated 04.03.2024 issued notice and till the returnable date stayed the further proceedings in Title Suit (M) No.57/2023 pending in the Court of the learned District Judge Sonitpur at Tezpur.

8. Pursuant to the notice, the respondent herein appeared. The learned

counsel for the respondent, Mr. A. Ganguly submitted that the respondent presently is posted at Seppa in the State of Arunachal Pradesh which is almost 200 Km from Tezpur. He further submitted that Tezpur is a convenient place for both the petitioner and the respondent as the distance between Hojai and Tezpur is around 115Km. He submitted that the only reason for seeking transfer is that the petitioner does not have a source of income. The respondent is ready to defray the transportation expenses from Hojai to Tezpur whenever the petitioner has to come to attend the Court.

9. I have heard the learned counsels for the parties and perused the materials on record.

10. 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 Tezpur and the divorce proceedings under the Hindu Marriage Act, 1955 is taken up by the Court of the District Judge, Sonitpur, at Tezpur. Under such circumstances, it has been submitted that 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 learned District Judge, Sonitpur at Tezpur.

11. In the backdrop of the said submission, this Court, therefore, needs to take into consideration as to what inconvenience would be caused to the parties, if the matrimonial proceedings are allowed to be continued before the Court of the learned District Judge, Sonitpur at Tezpur. As the embargo which is being

imposed under section 13 of the Family Courts Act, 1994 is not applicable before the Court of the learned District Judge at Sonitpur at Tezpur, the petitioner can very well participate in the said proceedings through a legal practitioner and it is not required for her to appear on each and every date, save and except, when directed by the Court wherein the said divorce proceedings are pending.

12. Taking into consideration that the Code of Civil Procedure is applicable and it is only at the stage of cross-examination when the witnesses, who adduced the evidence on affidavit is/are required to appear in the Court or before the Commissioner so appointed, or for that matter when the Court directs personal appearance of the parties, the appearance of the parties are required, this Court is of the opinion that no inconvenience would be caused if the proceedings are allowed to be continued before the Court of the learned District Judge Sonitpur at Tezpur. However, in order to meet the interest of justice and taking into consideration that the petitioner has no independent source of income as alleged, except to ask her parents, this Court is of the opinion and accordingly directs that whenever the petitioner's appearance is required before the Court of the learned District Judge Sonitpur at Tezpur, the respondent shall deposit an amount of Rs.3,500/- before the Court of the learned District Judge, Sonitpur at Tezpur and the petitioner upon her appearance before the said Court on the said date, shall withdraw the said amount with the permission of the Court of the learned District Judge, Sonitpur at Tezpur.

13. In view of the above observation, this Court is, therefore, not inclined to transfer the Title Suit (M) No.57/2023 pending in the Court of the learned District Judge Sonitpur at Tezpur. The respondent is directed to deposit an

amount of Rs.3,500/- in the manner abovementioned, as and when the petitioner appears before the Court below as per the directions of the Court, and the petitioner would be at liberty to withdraw the same with the permission of learned District Judge Sonitpur at Tezpur.

14. The above directions as regards the costs to be deposited of Rs.3,500/- shall not act as a bar to the petitioner to file an application under Section 24 of the Hindu Marriage Act, 1955.

15. With the above observations and directions the instant petition stands disposed of and the interim order passed on 04.03.2024 is vacated and the parties are directed to appear before the Court of the learned District Judge Sonitpur at Tezpur on 13.05.2024 on which date the petitioner shall file her written statement without fail.

JUDGE

Comparing Assistant