

GAHC010090312023



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

Case No. : Tr.P.(C)./40/2023

ANJAN KR. OJAH
S/O LT. JAGADISH OJAH,
R/O- VILL.- MADHYA PALANGATIHATI,
NEAR MAA SILK HOUSE,
P.O. AND P.S. BARPETA,
DISTRICT- BARPETA, ASSAM.

VERSUS

BHANITA TALUKDAR
W/O- SRI ANJAN KR. OJAH,
D/O- HARIMOHAN TALUKDAR,
R/O- VILL.- BARBILA, P.O.- BARBILA,
P.S. AND DISTRICT- BARPETA,
ASSAM.

Advocate for the Petitioner : MR. A GANGULY

Advocate for the Respondent : MR. S SARMA

Linked Case : Tr.P.(C)./73/2023

BHANITA TALUKDAR
D/O HARIMOHAN TALUKDAR R/O VILL. SANDHELI C/O PRASANTA SARMA
P.O. SANDHELI P.S BELSOR DIST. NALBARI ASSAM

VERSUS

ANJAN KR OJAH
S/O LT. JAGADISH OJAH R/O VIL. MADHYA PALANGATIHATI NEAR MAA

SILK HOUSE P.O. AND P.S. BARPETA DIST. BARPETA ASSAM PIN 781301

Advocate for : MR. S SARMA
Advocate for : MR. A GANGULY appearing for ANJAN KR OJAH

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 20.03.2024

1. Both the transfer applications are taken up for disposal vide this common order.
2. The parties before this Court in both the petitions are husband and wife. On account of matrimonial disputes, they are residing separately. The Petitioner in Transfer Petition No.73/2023 who is the wife filed a suit for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 before the learned Principal Judge at Nalbari. The said proceedings have been registered as Matrimonial Suit (D) No.38/2023 and the said application was filed on 09.02.2023. In the said proceedings, the husband who is the Petitioner in Transfer Petition No.40/2023 has also filed a written statement on 12.05.2023.
3. The records of both the cases further reveal that the husband filed a suit for restitution of conjugal rights on 19.05.2023 before the Principal Judge, Family Court, Barpeta. It is further relevant to mention that prior to filing the said suit by the husband, the husband filed the Transfer Petition (Civil) No.40/2023 before this Court and this Court vide an order dated 17.05.2023 stayed the further proceedings of Matrimonial Suit (D) No.38/2023 which was pending before the Court of the learned Principal Judge, Family Court, Nalbari.

4. Pursuant to the filing of T.S.(M).F.C. No.153/2023, Transfer Petition (Civil) No.73/2023 was filed seeking transfer of the T.S.(M).F.C. No.153/2023 to the Court of the Principal Judge, Family Court, Nalbari. Under such circumstances, both the matters are taken up analogously by this Court and the learned counsels for the parties were duly heard.

5. From the materials on record, it reveals that the Petitioner in Transfer Petition (Civil) No.73/2023 has instituted the proceedings for divorce first at Nalbari on 09.02.2023. The Petitioner in Transfer Petition (Civil) No.40/2023 i.e. the husband has duly participated in the said proceedings and filed his written statement. Subsequent thereto, Transfer Petition (Civil) No.40/2023 was filed and a stay order was obtained from this Court on 17.05.2023. Immediately, thereupon, the Petitioner in Transfer Petition (Civil) No.40/2023 filed the proceedings for restitution of conjugal rights being T.S.(M).F.C. No.153/2023 before the Principal Judge, Family Court, Barpeta on 19.05.2023. This Court is of the opinion that as the first proceedings was instituted before the Court of the Principal Judge, Family Court, Nalbari i.e Matrimonial Case (D) No.38/2023, the second proceedings ought to have been filed by the husband before the Principal Judge, Family Court, Nalbari more so taking into account Section 19 of the Hindu Marriage Act, 1955.

6. Under such circumstances, this Court transfers T.S.(M).F.C. No.153/2023 pending before the Court of the learned Principal Judge, Family Court, Barpeta to the Court of the learned Principal Judge, Family Court, Nalbari.

7. The Registry is directed to intimate both the Courts below about the instant order forthwith.

8. This Court further directs the learned Principal Judge, Family Court, Barpeta

to immediately transmit the records of T.S.(M).F.C. No.153/2023 to the Court of the Principal Judge, Family Court, Nalbari.

9. This Court further takes note of that as both the matters are inter-related, the learned Court of the Principal Judge, Family Court, Nalbari shall decide both the suits analogously.

10. During the course of hearing, this Court made a pointed query upon the learned counsel for the Petitioner in Transfer Petition No.73/2023 as to whether the said Petitioner had filed the written statement and he submitted that she had not filed the written statement and had approached this Court immediately after receipt of the summons.

11. Taking into account the above, this Court fixes the matter on 02.05.2024 before the Court of the learned Principal Judge, Family Court, Nalbari wherein the wife i.e. Smti. Bhanita Talukdar shall file her written statement in T.S. (M).F.C. No.153/2023 without fail.

12. The Court of the learned Principal Judge, Family Court, Nalbari shall thereupon proceed with the disposal of both the suits analogously as directed above and in accordance with law.

13. With above observations and directions, both the transfer petition stands disposed of.

14. Interim orders which were passed in both the transfer petition stands vacated.

JUDGE

Comparing Assistant