

GAHC010118812024



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

Case No. : Tr.P.(C)/48/2024

NIBEDITA NATH

D/O- RANJU KUMAR NATH, R/O- HAILAKANDI TOWN, WARD NO. VIII, P.O. LAKSHMISAHAR, PS. AND DIST. HAILAKANDI, ASSAM

VERSUS

SIDDHARTHA SANKAR NATH

S/O- LATE SABIT NATH, R/O- VILL. PALADAHAR, P.O. BAZARGHAT, P.S. RATABARI, DIST. KARIMGANJ, ASSAM, PIN- 788733.

Advocate for the Petitioner : MR. S B LASKAR, MR. H A LASKAR, MS D DUTTA, A. H. AHMED

Advocate for the Respondent : MR S DUTTA, MS S MOCHAHARI, MR. S DUTTA, MR S DUTTA

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

05.09.2024

Heard Mr. S.B. Laskar, learned counsel for the petitioner and Mr. S. Dutta, learned counsel for the respondent.

2. This petition, under Section 24 of the C.P.C. is preferred by the petitioner, for transferring of T.S. (Divorce) Case No. 129/2023, from the court of learned District Judge, Karimganj to the court of learned District Judge, Hailakandi.

3. Mr. Laskar, learned counsel for the petitioner submits that the petitioner is a resident of Hailakandi, where two other cases, being M.R. Case No. 83/2022, under Section 125 of the Cr.P.C. and D.V. Case No. 87/2022, under Sections 12/18/19/20/22 of the Protection of Women from Domestic Violence Act are pending before the learned Chief Judicial Magistrate, Hailakandi and that the respondent is regularly appearing in the aforesaid cases before the learned Chief Judicial Magistrate, Hailakandi. Mr. Laskar further submits that the distance from the house of the respondent to the District Court at Karimganj is 38 k.m., whereas, the distance from the house of the respondent to the District Court at Hailakandi is 29 k.m. and under such circumstances, it is contended that the T.S. (Divorce) Case No. 129/2023, may be transferred from the court of learned District Judge, Karimganj to the court of learned District Judge, Hailakandi.

4. On the other hand, Mr. Dutta, learned counsel for the respondent referring to a decision of Hon'ble Supreme Court in the case of **Anindita Das vs. Srijit Das**, reported in **(2005) 9 SCC 197**, vehemently opposed the petition and he has agreed to bear the cost of the petitioner to visit the District Court at Karimganj and therefore, it is contended to dismiss the petition.

5. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the decision of Hon'ble Supreme Court in the case of **Anindita Das (Supra)**.

6. It is not in dispute that two other cases, being M.R. Case No. 83/2022, under Section 125 of the Cr.P.C. and D.V. Case No. 87/2022, under Sections 12/18/19/20/22/18 of the Protection of Women from Domestic Violence Act are pending before the learned Chief Judicial Magistrate, Hailakandi. It is also not in dispute that the distance from the house of the respondent to the District Court at

Karimganj is 38 k.m., whereas, the distance from the house of the respondent to the District Court at Hailakandi is 29 k.m.

7. That being so, it would be convenient to both the parties, if the case is transferred to the court of learned District Judge, Hailakandi.

8. It is also to be noted here that in the case of **Indian Overseas Bank vs. Chemical Construction Company**, reported in **(1979) 4 SCC 358**, while dealing with consideration that has to be taken into account for transferring a case, the Hon'ble Supreme Court has held as under :-

“16. The principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The court should not lightly change that forum and compel him to go to another court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another court, albeit a material consideration, may not always be a sure criterion justifying transfer.

17. As compared with Section 24, the power of transfer of civil proceeding to another court, conferred under the new Section 25 on the Supreme Court, is far wider. And, so is the amplitude of the expression, “expedient in the interest of justice” which furnishes a general guideline for the exercise of the power. Whether it is expedient or desirable in the interest of justice to transfer a proceeding to another court, is a question which depends on the

circumstances of the particular case.”

9. There is, however, unanimity of opinion that ‘balance of convenience’ is the prime consideration for transfer of a suit. The expression "balance of convenience" has inspired profound legal thought and has acquired the gloss of many judicial interpretations. Restated in simple terms it is a question of fact in each case. ‘Balance of convenience’ is neither the convenience of the plaintiff alone nor of the defendant alone but the balance of convenience of both. In determining the balance of convenience for the trial of a suit, the Court has to take into consideration the following:-

- “(1) Convenience or inconvenience of the plaintiff and the right of the plaintiff to choose his own forum;
- (2) Convenience or inconvenience of the defendant;
- (3) Convenience or inconvenience of the witnesses required for a proper trial of the suit;
- (4) Convenience or inconvenience of the particular place of trial having regard to the nature of the evidence on the main points involved in the suit and also having regard to the doctrine of ‘forum convenience’; and
- (5) Nature of issues in the suit.(Ref. Baburam Agarwalla vs. Jamunadas Ramji And Co. reported in AIR 1951 Cal 239)”

10. It is also to be noted here that I have carefully gone through the decision referred by Mr. Dutta, learned counsel for the respondent in the case of **Anindita Das (Supra)**. But, I find that the facts here in this case are distinguishable from the facts in the referred case.

11. Having considered the aforementioned aspects and also in view of the principle laid down in the case of **Indian Overseas Bank (Supra)** and the 'balance of convenience' of the parties, this court is inclined to allow the petition. Accordingly, it is provided that T.S. (Divorce) Case No. 129/2023, pending before the court of learned District Judge, Karimganj, stands transferred to the court of learned District Judge, Hailakandi.

12. The petitioner shall obtain a certified copy of this order and place the same before the learned District Judge, Karimganj and on receipt of the order, the learned District Judge, Karimganj shall transmit the record of T.S. (Divorce) Case No. 129/2023, to the learned District Judge, Hailakandi within a period of one week, from the date of receipt of the certified copy of the order.

13. In terms of above, this transfer petition stands disposed of.

Comparing Assistant

JUDGE