

GAHC010172742023



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

Case No. : Tr.P.(C)./77/2023

PAMPI KONWAR
W/O- PANKAJ KONWAR, R/O- GUWAHATI BASISTHA, LALMATI, NEAR
GAMES VILLAGE, HOUSE NO. 10, GUWAHATI, ASSAM, PIN- 787110.

VERSUS

PANKAJ KONWAR
S/O- ANANTA KONWAR, R/O- SIRAPANI, AHOMGAON, SISSIBORGAON, P.O.
JANAKALYAN CHARIALI, P.S. SILAPATHAR, DIST. DHEMAJI, ASSAM, PIN-
787110.

Advocate for the Petitioner : MR P R SARMA, MR D MEDHI

Advocate for the Respondent : ,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

18.09.2024

Heard Mr. P.R. Sarma, learned counsel for the petitioner.

2. This application under Section 24 of the Code of Civil Procedure, 1908, is preferred by the petitioner for transferring the Misc.(Gr.) Case No.07/2022, under Section 9(1) of

the Guardianship & Wards Act, 1890, read with Section 6(a) of the Hindu Minority & Guardianship Act, 1956, which is pending before the Court of learned District Judge, Dhemaji to the learned Principal Judge, Family Court, Kamrup(M), Guwahati.

3. Mr. Sarma, learned counsel for the petitioner submits that the petitioner is the wife of the respondent and their marriage was solemnized on 08.12.2011 and out of their wedlock a male child was born to them and his present age is 8 years 2 months. Mr. Sarma further submits that the petitioner is presently residing at Guwahati and the child was also living with her. But, the respondent had instituted one Misc.(Gr.) Case No.7/2022 under Section 9(1) of the Guardianship & Wards Act, 1890, read with Section 6(a) of the Hindu Minority & Guardianship Act, 1956 before the Court of learned District Judge, Dhemaji and since the petitioner is presently residing at Guwahati, it is not possible on her part to contest the aforesaid suit before the Court at Dhemaji and therefore, it is contended to transfer the same to the Court of learned Principal Judge, Family Court, Kamrup(M), Guwahati. Mr. Sarma further submits that after institution of the aforementioned proceeding before the learned District Judge, Dhemaji, the respondent had called the petitioner along with her child to Dhemaji to settle the dispute and thereafter, the respondent had forcefully taken away the child from the petitioner and since then the child is living with the respondent and fair trial may not be possible at Dhemaji. Mr. Sarma further submits that an attempt was made to cause service of notice upon the respondent by *dasti* mode, but he refused to accept the notice and to that effect one affidavit has been filed. As the respondent chooses not to contest the present proceeding and therefore, Mr. Sarma contended to allow this petition.

4. The principle governing transfer of cases has been dealtwith by Hon'ble Supreme Court in the case of **Indian Overseas Bank v. 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."

5. 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)”

6. Again, in the case of *Mrs. Maneka Sanjay Gandhi and Anr. v. Ms. Rani Jethmalani* (1979) 4 SCC 167, Hon'ble Supreme Court has emphasized the necessity to ensure fair trial, observing as hereunder: "Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

7. Although, *Mrs. Maneka Sanjay Gandhi* (supra) relates to a criminal case, yet the context is same i.e. transfer. Therefore, this court is of the view that the principle enunciated therein can be applied in other cases also.

8. Thus, it appears that though the plaintiff is *dominus Litis*, yet, the aforesaid right can be interfered with by the court on consideration of several factors and out of the same 'balance of convenience' is the prime consideration.

9. In the backdrop of given legal proposition, the submission of Mr. Sarma, learned counsel for the petitioner, has to be considered.

10. Here in this case, it appears from the record that the petitioner is residing at Guwahati. The respondent is living at Dhemaji, where he has instituted the proceeding. The child is now in the custody of the respondent, who called the present petitioner to Dhemaji alluring her to settle the issues amicably, but he had forcefully taken away the child from the petitioner. That being so, fair trial may not be possible in the Court at Dhemaji, given the factum of taking away of the child forcefully by the respondent from the custody of the petitioner is taken into consideration.

11. Thus, considering the facts and circumstances on the record and weighing the 'balance of convenience' against the *dominus litis*, I find that the 'balance of convenience' has outweighed the *dominus litis* of the respondent herein.

12. Accordingly, Misc.(Gr.) Case No.7/2022 pending before the Court of learned District Judge, Dhemaji, stands transferred to the Court of learned Principal Judge, Family Court, Kamrup(M), Guwahati.

13. The petitioner shall obtain a certified copy of this order and place the same before the learned District Judge, Dhemaji. On receipt of which, the learned District Judge, Dhemaji, shall transmit the record to the Court of learned Principal Judge, Family Court, Karmup(M), Guwahati.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant