

GAHC010180772023



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

Case No. : Tr.P.(C)./74/2023

MAUSHUMEE BEZBARUAH
W/O- SRI. DULAL HAZARIKA,
D/O- MAHAT SEAL,
R/O- HAJO, BEZTOLA,
P.S.- HAJO, DIST.- KAMRUP,
ASSAM.

VERSUS

DULAL HAZARIKA
S/O- LATE UPARAM HAZARIKA,
R/O- LOJORA,
P.O.- NO. 2 BARIGAON,
P.S.- SIPAJHAR,
DIST- DARRANG, ASSAM,
PIN- 784147.

Advocate for the Petitioner : MR. S RANA

Advocate for the Respondent : MS D DUTTA

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 20.05.2024

Heard Mr. S. Rana, the learned counsel appearing on behalf of the Petitioner and Ms. D. Dutta, the learned counsel appearing for the Respondent.

2. This is an application under Section 24 of the Code of Civil Procedure, 1908

for transfer of Title Suit (Divorce) Case No.20/2023 pending before the Court of the learned Additional District and Sessions Judge (FTC), Darrang, Mangaldai to the Court of the learned Principal Judge, Family Court, Kamrup (M), Assam.

3. The brief facts of the instant case are that the marriage between the Petitioner and the Respondent was solemnized on 08.05.2022 according to Hindu rites and customs at Hajo. Thereafter, both the husband and wife started living together at the official railway quarter of the Respondent in Lumding as the Respondent is a Railway serviceman. After their marriage, it is alleged that the Respondent started harassing and torturing his wife by demanding dowry and pressuring to co-operate for unnatural physical relations etc. which was against her will.

4. The learned counsel for the Petitioner submitted that on 15.08.2022, when the father of the Petitioner went to visit the Petitioner, the Respondent badly beaten his wife in presence of her father and kicked on her abdomen and sent back her to Hajo with her father and on the way, the Petitioner was suffering from heavy bleeding because she was pregnant. In this regard, a detail ejahar has been lodged on 26.01.2023 at Hajo Police Station and a case being Hajo P.S. Case No.56/2023 was registered under Sections 377/498(A)/325/313/427/307 of the Indian Penal Code.

5. The learned counsel for the Petitioner further submitted that the Petitioner has filed a maintenance case before the learned Principal Judge, Family Court, Kamrup (M) being F.C. (Crl) No.117/2023 and another complaint being C.R. No.12/2023 registered under Section 406 of the Indian Penal Code has been filed by the Petitioner against the Respondent for recovery of Stridhan Articles.

Thereafter, the Respondent has filed a divorce case being Title Suit (Divorce) Case No.20/2023 before the Court of the learned Additional District and Sessions Judge (FTC), Darrang, Mangaldai seeking dissolution of marriage under the provisions of Hindu Marriage Act, 1955.

6. It is the case of the Petitioner that the Petitioner is a permanent resident of Hajo and the Respondent is working as CTI, Indian Railway, Lumding Division and his duty is within Lumding and Guwahati for which the Respondent regularly visits Guwahati for his official duty. Hence there would be no difficulty on the part of the Respondent to appear before the Principal Judge, Kamrup (M) at Guwahati if the said divorce proceedings being Title Suit (Divorce) Case No.20/2023 is transferred from the Court of the learned Additional District and Sessions Judge (FTC), Darrang, Mangaldai to the Court of the learned Principal Judge, Family Court, Kamrup (M) at Guwahati. But the Respondent has filed the said divorce case before the Court of the learned Additional District and Sessions District Judge, Darrang only with an intention to harass the petitioner financially, mentally as well as physically.

7. I have heard the learned counsels for the parties.

8. Upon hearing the learned counsels for the parties and perusal of the records, this Court is of the opinion that the grounds assigned in the instant application are not sufficient for the purpose of transferring the said Title Suit (Divorce) Case No.20/2023 from the Court of the learned Additional District and Sessions Judge, (FTC) Darrang, Mangaldai to the Court of the learned Principal Judge, Family Court, Kamrup (M), Assam. The difficulties so mentioned in the said application seeking transfer, in the opinion of this Court are misconceived

inasmuch as the distance between Hajo and Guwahati and Hajo and Mangaldai is minimum but in the case, the proceedings are transferred to Guwahati as there is an established Family Court, Section 13 of the Family Court Act, 1984 would mandate the Petitioner travelling to Guwahati on each date for her appearance. On the other hand, the Petitioner can very well engage an advocate to appear on her behalf in the said Court at Darrang, Mangaldai and it is only on the occasions when her personal presence would be required, then she can very well appear before the said Court in person.

9. This Court also finds it relevant to mention 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 Additional District and Sessions Judge, (FTC) Darrang, Mangaldai.

10. Consequently, this Court finding no tenable grounds for transfer, dismisses the instant petition.

11. The interim order dated 21.08.2023 whereby the further proceedings of the Title Suit (Divorce) Case No.20/2023 was stayed is hereby vacated.

12. Both the parties are directed to appear before the learned Additional District and Sessions Judge (FTC), Darrang, Mangaldai on 08.07.2024 either by themselves or by their engaged counsels on which date, the Petitioner shall file her written statement, if not filed.

13. Before parting, this Court observes that the Petitioner herein shall be entitled to an amount of Rs.3,500/- as transportation costs on each day of her appearance before the learned Trial Court which the Respondent herein shall pay. The said amount so directed to be paid shall not bar the Petitioner herein

to claim other entitlements as entitled under law.

14. With above observations and directions, the instant transfer petition stands dismissed.

JUDGE

Comparing Assistant