

GAHC010224632021



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

Case No. : Tr.P.(C)./78/2021

PALLABI DAS
W/O SRI BISWAJIT DAS
(D/O SRI GOPENDRA DAS)
VILL- CHALIGRAM, P.O. KALAIN BAZAR
DIST. CACHAR, ASSAM

VERSUS

BISWAJIT DAS
S/O HIRENDRA DAS
VILL- SUPNARGUL, P.O.
MAIZGRA, P.S. AND DIST. KARIMGANJ, ASSAM

For the petitioner (s) : Mr. S. D. Purkayastha, Advocate

For the respondent (s) : None appears

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

27.05.2024

This is an application under Section 24 of the Code of Civil Procedure, 1908 for transfer of F.C.(Civil) Case No. T.S.(Restitution) No.15 of 2021 pending before the Court of the learned District Judge, Karimganj, Assam

to the Court of the learned Principal Judge, Family Court, Silchar, Cachar Assam.

2. The brief facts of the instant case are that the marriage between the Petitioner and the Opposite Party was solemnized on 13.03.2020 according to Hindu rites and customs. Thereafter, both the husband and wife started living together at the house of the Opposite Party in Supnargul, Karimganj.

3. It is the case of the Petitioner that the Petitioner was both physically and mentally tortured by the respondent and his family members. Thereafter, the petitioner filed a complaint case before the Court of the learned District Judge, Cachar, Silchar being Complaint Case No.330M/2020 under Section 94 of the Cr.P.C. Thereafter, the petitioner filed F.C. Case No. (Crl) 03/2021 in the Court of the Principal Judge, Family Court, Silchar, Cachar under Section 125 Cr.P.C. claiming monthly maintenance of Rs.10,000/- as she was unable to maintain herself. It is the further case of the petitioner that on 22.11.2021, she received a summon from the Court of the learned District Judge, Karimganj, Assam in T.S.(Restitution) Case No.15/2021 filed by the respondent concealing the fact of Case No.330M/2020 filed by the petitioner.

4. The case of the Petitioner is that as she is without any income and her father is a petty businessman and it would be difficult on her part to engage a lawyer and go to the other district for physical appearance before the Court of the District Judge, Karimganj, Assam.

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

6. 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 F.C. (Civil) Case No. T.S.(Restitution) No.15 of 2021 pending before the Court of the learned District Judge, Karimganj, Assam to the Court of the learned Principal Judge, Family Court, Silchar, Cachar Assam. The difficulties so mentioned in the said application seeking transfer, in the opinion of this Court are misconceived. Apart from that, the petitioner can very well engage an advocate to appear on her behalf in the said Court at Karimganj, Assam 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.

7. 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 Karimganj and the divorce proceedings under the Hindu Marriage Act, 1955 is taken up by the Court of the learned District Judge, Karimganj, Assam. Under such circumstances, 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 at Karimganj.

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

9. The interim order dated 03.01.2022 whereby the further proceedings of the F.C.(Civil) Case No. T.S.(Restitution) No.15 of 2021 was stayed is hereby stands vacated.

10. Both the parties are directed to appear before the learned Court of the District Judge, Hojai on 15.06.2024 either by themselves or by their engaged counsels on which date, the Petitioner shall file her written

statement without fail.

11. 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.

JUDGE

Comparing Assistant