

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2128 of 2014

In
Matrimonial Reference No. 188 of 2013

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Smt. Nilu Prabha Wife of- Prince Kumar, Daughter of- Sri Prabha Shankar Mishra, Resident of Village- Pansalla, P.S.- Town, District- Begusarai, At present Residing at- Mahanth College, Sarvoday Nagar (Bhardwaj Nagar), P.S.- Town, District- Begusarai

.... Petitioner/s

Versus

Prince Kumar, Son of- Sri Arun Kumar Thakur , Resident of Village- Belsandi Tara, P.S. Bibhutipur , District- Samastipur

.... opposite party /s

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Appearance :

For the Petitioner/s : Mr. Pritish Kumar Lal

For the opposite party/s :

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

5 07-02-2017 Heard Sri S.K. Lal, learned counsel assisted by Sri Pritish Kumar Lal, learned counsel for the petitioner and Sri Uma Shankar Prasad Singh, learned counsel for the opposite party/ husband of the petitioner.

The petitioner, has approached this Court under Section 24 of the Code of Civil Procedure, with a prayer to direct for transferring Matrimonial Case No. 188 of 2013 from the court of Principal Judge, Family Court, Samastipur to the court of competent jurisdiction at Begusarai.

Short fact of the case is that petitioner's marriage with opposite party was solemnized on 2.7.2009. As per petitioner she was ousted from the in -laws house on 1.7.2013 and immediately



on the next date the husband filed a matrimonial case under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal life vide Matrimonial Case No. 188 of 2013. It was submitted by Sri Lal that since the petitioner was tortured physically and mentally the petitioner also filed a complaint case in the month of March 2014 in the court of Sub Divisional Judicial Magistrate, Begusarai. It has been emphatically argued that petitioner is a lady and she is not having any means to participate in the proceeding at Samastipur from Begusarai and as such, a prayer has been made for transferring the record .

Learned counsel appearing on behalf of the opposite party has opposed the prayer. By way of referring to the facts disclosed in the Matrimonial Suit i.e. Annexure – ‘1’ to the petition, it was argued that petitioner had voluntarily left the house of her husband some time in the year 2010. Thereafter several attempts were made by the opposite party for settling the dispute and subsequently from husband’s side earlier a case was filed for restitution of conjugal life vide Case No. 168 of 2011. However, the said petition stood dismissed due to non-prosecution. After failing to get the his wife back the husband was constrained to file a suit in the court of Principal Judge, Family Court for restitution of conjugal life.



Besides hearing learned counsel for the parties I have also perused the materials available on record. In the suit before the court below a specific stand has been taken that the petitioner had left the matrimonial house in the year 2010. It has also been indicated that in the year 2011 also a case was filed which was dismissed due to non -prosecution and finally the Matrimonial Case No. 188 of 2013 was filed under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal life. The plea which has been taken by the petitioner that only on the next date from the date of her ousting matrimonial case was filed may not be accepted as true keeping in view the specific stand taken in the plaint before the court below that petitioner had left the matrimonial house in the year 2010. The court is of the opinion that in such situation no order can be passed for transferring the record. I do not find any ground to pass favourable order.

The petition stands dismissed.

In view of dismissal of this petition, interim order of stay dated 27.8.2014 stands vacated.

(Rakesh Kumar, J)

Praful/-

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