

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Jurisdiction Case No.3917 of 2016**

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1. Anand Mohan, Son of Arjun Singh, resident of village - Bhabhangama, P.S. Pakhisarai Town, District - Lakhisarai, Presently residing at Purani Bazar, West, Sahjanand Nagar, Near Govind Bhavishya Bharti School, Lakhisarai
2. Arjun Singh, Son of Late Lakhan Singh, resident of village - Bhabhangama, P.S. Pakhisarai Town, District - Lakhisarai, Presently residing at Purani Bazar, West, Sahjanand Nagar, Near Govind Bhavishya Bharti School, Lakhisarai

.... .... Petitioner/s

Versus

1. Niju Kumari, W/o Anand Mohan, resident of village - Bhabhangama, P.S. Pakhisarai Town, District - Lakhisarai, at Present D/o Rama Kant Singh, resident of village - Bariyarpur, P.S. Balia, District - Begusarai

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Arun Kumar  
For the Opp. Party : Mr. Sanjeev Kumar

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**CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA**  
**ORAL ORDER**

6      08-02-2018                      Heard learned counsel for the petitioner and learned counsel appearing on behalf of the sole opposite party.

The present application has been filed for transfer of Matrimonial Case No. 32 of 2016 filed under Sections 9 of the Hindu Marriage Act pending in the Family Court, Begusarai to the Family Court, Lakhisarai on the sole ground that the petitioner No. 2 is eighty years old and not in a position to move freely.

It is submitted on behalf of learned counsel for the petitioner that the petitioner No. 1 is the husband and petitioner No. 2 is the aged old father-in-law who are permanent residents of



Lakhisarai. Petitioner No. 1 is the husband of opposite party and is posted as Constable in Jharkhand Police at Chatra which is Naxal infested area and, therefore, it is not suitable for the opposite party to reside alongwith him at Chatra and the opposite party used to reside at Lakhisarai Town and had been kept there along with petitioner No. 2 who is father-in-law. Learned counsel for the petitioner further submits that only in order to pressurize the petitioners, she has also filed a case under Section 498(A) as well as Dowry Prohibition Act at Lakhisarai being Lakhisarai P.S. Case No. 430 of 2015 under Section 498(A)/323 and 3/4 of the Dowry Prohibition Act making both these petitioners as accused persons. Learned counsel for the petitioner next submits that in view of the fact that the petitioner No. 1 is posted away at Chatra (Jharkhand), it is difficult for him to go to Begusarai to pursue the matrimonial case pending before the Family Court. He thus submits that it may be transferred to Lakhisarai.

It appears that in this case that the matter was also referred to the Mediation Centre (Patna High Court) for resolution of the dispute but, the report of the learned Mediator dated 27.11.2017 clearly indicates that despite sincere efforts the Mediation could not succeed and has failed. It, thus, appears that the petitioners have no option but, to contest the matter before the



Family Court.

Learned counsel for the petitioner has drawn my attention to a judgment in the case of **Fojiya Nishat V. The State of Bihar** reported in **2017(3) P.L.J.R. 12** wherein this Court has held that the convenience of the parties would not be of paramount consideration for transfer of the case rather the transfer petition would be guided by the terms of the Code. In the instant case, the transfer of the case is also a Matrimonial Case filed under Section 9 of the Hindu Marriage Act. Thus, the provisions of the Code as contained in Section 407, which is the subject-matter of the said citation, would not be applicable in the case of the petitioner. Learned counsel for the petitioners, however, has also referred to a judgment of the Apex Court cited in **(2016) 3 SCC 69 (Tejalben V. Mihirbhai Bharatbhai Kothari)** and after considering the nature of dispute between the parties, the said judgment would also not benefit the petitioner as Mediation before this Court has already failed.

Considering the convenience of the lady who is now a resident of Begusarai where she has filed the case under the Family Courts Act, it is advisable and in the interest of justice that the same be continued at Begusarai itself.

Thus, the prayer of the petitioners stands rejected.



However, considering the fact that the petitioner No.1 is posted outside the State of Bihar, it is directed that the present case be disposed of at the earliest, preferably within a period of four months from the date/production of a copy of this order.

**(Anjana Mishra, J)**

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