IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2777 of 2016

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Neha Rai W/O Manish Kishor, D/o madhukar Rai, R/o Mohalla- Gannipur Thakur Chaturbhuj prasad Marg, P.s.- Kazimohammadpur, P.O., town & District Muzaffarpur, at present resident of Village- vilsapur, P.o.& P.s. Ramnagar District- West Champaran.

.... Petitioner/s

Versus

Manish Kishor S/o Praveen Chandra Kishor, permenent R/o villge- Ashoi, P.O. & P.S.- Bhagwanpur, District Vaishali- presently residing at Mohall - Gannipur Thakur Chaturbhuj Prasad Marg, P.s Kazimohammadpur, P.o., town & District- Muzaffarpur, presently posted at Indian overseas Bank, Faizabad branch , Alka Tower, Rakabganj, Neyawan Road, Faizabad-225478

.... Respondent/s

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Appearance :
For the Petitioner/s : Ms. Vagisha Pragya Vacaknavi, Adv.
Mr. Manu Tirpurari, Adv.
For the Respondent/s : Mr. Yashraj Bardhan, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 23-08-2018 Heard learned counsel for the petitioner and learned counsel representing the sole opposite party.

Petitioner in this case is seeking transfer of the Matrimonial Case No.285 of 2015 pending in the Court of learned Principal Judge, Family Court, Muzaffarpur, which has been instituted by the Opposite Party under the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act of 1955').

The petitioner is seeking divorce on the ground of cruelty and fraud said to have been played upon him by suppressing material fact relating to mental illness of the petitioner at the time

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of marriage.

The petitioner has filed a criminal case at Bettiah, West Champaran, within whose jurisdiction she is presently residing in Village- Bilaspur. She has also filed a Domestic Violence Case No.C-475 of 2015 in which she has been awarded maintenance of Rs.15,000/- per month with effect from May, 2016.

Learned counsel representing the petitioner submits that this petitioner is not an employed lady, she has no other source of income and she is fully dependant upon her parents for her day to day expenditure. It is pointed out that despite there being an order to pay maintenance, the Opposite Party is contesting the issue for last more than two years before various Courts and he having good source of income is though spending on litigation but not paying single paisa to maintain this petitioner. It is submitted that being a young lady having no other person to assist her in contesting the case, even as she has no source of income, it would not be possible for her to visit the Court at Muzaffarpur covering a distance of 150 Kms in one way on the dates fixed in the matter.

It is submitted that on the other hand the petitioner is having man power in terms of his parents residing at Muzaffarpur and other relations and even though he is posted at Faizabad, the fact that he has been contesting the matter at Muzaffarpur, clearly

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demonstrates that he has got the resources to contest the matter at Muzaffarpur, therefore, if the case is transferred to Bettiah Court it will not make any difference to the Opposite Party.

On the other hand, learned counsel representing the Opposite Party submits that only because it will be convenient for the wife-petitioner to contest the case at Bettiah the case should not be transferred. He has relied upon a judgment of the Hon'ble Supreme Court in the case of **Krishna Veni Nigam vs. Harish Nigam** reported in **2017 (2) BLJ SC 142** wherein the Hon'ble Apex Court has issued certain directions with regard to the matrimonial matters and has taken note of the problems being faced by the husband if proceedings are transferred on account of genuine difficulties faced by the wife. The Hon'ble Apex Court took note of the fact that the husband may find it difficult to contest proceedings at a place which is convenient to wife, thus transfer is not always a solution acceptable to both the parties and in such circumstance, it may be appropriate that available technology of video conferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties.

Learned counsel has also referred to Paragraph 18 of the judgment of the Hon'ble Apex Court.

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Having heard learned counsel for the petitioner and learned counsel representing opposite party and on perusal of the records this Court finds that, in the present case the husband-opposite party is an employee working in a Bank and is presently posted at Faizabad in the State of Uttar Pradesh. He has filed this matrimonial suit at Muzaffarpur which is his native place and where his family members are residing. Presence of the petitioner at Muzaffarpur cannot be obtained without causing inconvenience to her, still he has chosen to file the case at Muzaffarpur, he is fully aware of his own inconvenience in pursuing the matter at Muzaffarpur due to his posting at Faizabad. Apparently, he has chosen this place because he has man power resource in terms of family members to make necessary pairvi, admittedly he has no dearth of money as he is in good employment and can spend on litigation as per his wish.

On the other hand, the petitioner is a young lady who immediately after her marriage is facing this contest which has been brought by her husband in the Court at Muzaffarpur. The difficulty which has been expressed before this Court is not only in terms of money which she does not have but also because she has no employment and has no income to defend herself from any other source. The Opposite Party is not paying any maintenance

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amount at present. She is dependant on her parents for day to day expenses. The fact which this Court has noted hereinabove and may be noticed even for the purpose of taking view in this transfer petition is that despite there being an order passed by the competent Court in the Domestic Violence Case awarding maintenance of Rs.15,000/- per month since May, 2016, admittedly, the Opposite Party has not paid her a single paisa. This Court can understand that the Opposite Party may pursue his statutory remedies in accordance with law but at the same time, the result of such contest is that the petitioner is not getting any money at all which has made it difficult for her to contest the matter.

The reliance placed by learned counsel representing the petitioner on the judgment of the Hon'ble Supreme Court in the case of **Krishna Vani Nigam (supra)** is by ignoring the facts and circumstances of the present case which is totally distinguishable. In the case of **Krishna Vani Nigam (supra)** the transfer petition was filed for transfer of the case from the Court of learned Presiding Officer, Family Court, Jabalpur to the learned Family Court at Hyderabad. In the nature of the contest which was placed before the Hon'be Supreme Court, the Hon'ble Apex Court proceeded to consider as to whether a general order may be passed

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to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the Court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court.

In the present case the petition has not been filed by the husband rather the petition has been filed by the wife and that will be the first distinguishing feature of this case. In paragraph 15 of the judgment in the case of Krishna Vani Nigam (supra) no doubt the Hon'ble Supreme Court has taken note of the submission that the problem faced by the husband should also not be ignored but having said that the Hon'ble Supreme Court has not laid down any law saying that in no case the request of the wife may be accepted.

In the opinion of this Court, the difficulties being expressed by the petitioner in the present case which have been taken note of hereinabove would compel this Court to take a view that the records of this case being Matrimonial Case No.285 of 2015 be transferred from the Court of learned Principal Judge, Family Court, Muzaffarpur, to the Court of learned Principal Judge, Family Court, Bettiah, West Champaran. If Opposite Party can contest this case sitting at Faizabad in the Court at Muzaffarpur, in the given circumstance, this Court does not find

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any reason to take a view that Opposite Party will have any difficulty in contesting the matter at Bettiah with the resources which he has.

The application is allowed.

The records will be transferred within a period of 15 days.

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

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