

IN THE HIGH COURT OF ORISSA AT CUTTACK

TRP(C) No.20 of 2022
(Through Hybrid mode)

Prajnya Priyadarsini Satapathy @ Petitioner
Hota

Mr. Satyabrata Mohanty, Advocate

-versus-

Ashish Ranjan Hota Opposite Party

Mr.Devashis Panda, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
21.03.2022

Order No.

04. 1. Mr. Mohanty, learned advocate appears on behalf of petitioner and submits, his client is the wife. She has prayed for transfer of C.P. Case no.161 of 2019 and D.V. Misc. Case no.193 of 2019 pending before Family Court, Bhubaneswar to Family Court, Cuttack. She submits, she is residing in her parental house at Cuttack. There is a minor daughter with her. It will be difficult for her to travel to Bhubaneswar to give evidence in the C.P. case (divorce). On query from Court he submits, his client filed the domestic violence case.
2. He submits further, this transfer petition was specially assigned to this Bench because the writ petition filed by opposite party-husband [WP(C) no.18378 of 2021] was disposed of by this Bench on order dated 6th December, 2021. By that order there was direction for expeditious disposal of the C.P. Case.

3. Mr. Panda, learned advocate appears on behalf of the husband and submits, marriage took place on 5th September, 2017 under Special Marriage Act, 1954. Subsequently, there was solemnization of marriage by observing Hindu rituals on 24th November, 2017. The dissolution of marriage case has been filed under section 27.

4. Court has ascertained that marriage between the parties took place on 5th September, 2017 under Special Marriage Act, 1954. The husband has filed for divorce under said Act before Family Court, Bhubaneswar but wife has filed for restitution under Hindu Marriage Act, 1955.

5. Section 24 in Code of Civil Procedure confers discretion on the Court to transfer, inter alia, the proceeding. Petitioner seeks transfer of duly instituted divorce proceeding to Family Court, Cuttack because she has filed for restitution of conjugal rights under section 9 of Hindu Marriage Act, 1955. From averments made in the petition it is clear that she got married to opposite party on 5th September, 2017 under Special Marriage Act, 1954 and consummated the marriage. As such, it cannot be said that case filed by her for restitution under Hindu Marriage Act, was duly instituted.

6. In the circumstances aforesaid, Court refuses to exercise discretion. Hence, the petition is dismissed.

(Arindam Sinha)
Judge

RKS