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IN THE HIGH COURT OF ORISSA AT CUTTACK

TRP(C) No. 86 of 2022

Sonalija Jena

.....

Petitioner

Mr. B. Parida, Adv.

Vs.

Abinash Mohapatra

.....

Opposite Party

Mr. R. Prusty, Advocate

CORAM:

JUSTICE SAVITRI RATHO

ORDER

19.10.2022

Order No.

05.

(Through hybrid mode)

1. This application has been filed by the petitioner-wife under Section 24 of C.P.C. for transfer of C.P. No. 48 of 2021 filed under Section 22 of the Special Marriage Act, 1954 read with Section 7 of the Family Court Act by the opp. party-husband for restitution of conjugal rights, in the Court of learned Judge, Family Court, Rourkela, to the Court of learned Judge, Family Court, Bhubaneswar.

TRP(C) No. 235 of 2022 has been filed by the petitioner-wife under Section 24 of C.P.C. for transfer of C.P. No. 128 of 2022 filed by the opp. party-husband under Section 25 of the Guardian & Wards Act 1890, in the Court of learned Judge, Family Court, Rourkela, to the Court of learned Judge, Family

Court, Bhubaneswar, which is listed today along with this TRP(C) and is also disposed of today by a separate order .

2. Vide order dated 08.09.2022 , the matter was referred for mediation to the Orissa High Court Mediation Centre .The Mediator has submitted an interim report dated 27.09.2022 informing that the next date of meditation was 12.10.2022. Today, in TRP(C) No. 235 of 2022 , Mr. Parida, learned counsel for the petitioner has filed the copy of the mediation report dated 12.10.2022 along with a memo . The mediator has inter alia reported that the mediation became unsuccessful. As mediation has failed, the two TRP(C) s are taken up for final disposal on the consent of the counsels.

3. Mr. B. Parida, learned counsel for the petitioner- wife submits that the parties had fallen in love and their marriage was arranged and solemnized before friends and relatives in the Rourkela Club on 10.02.2012 . The parents of the petitioner had fulfilled the demands made at the time of marriage. But soon after her marriage she was tortured at Rourkela the place of her in laws as well as at her husband's workplace in Jharsuguda. They demanded Rs 5 lakhs more as dowry. Their son was born on

23.08.2014 . But the opposite party continued to harass her . The parties stayed in Bhubaneswar between 2015 to 2016 , but the opposite party left her and son and went back to Rourkela . She has lodged FIR against him at the Uditnagar Police Station . She has filed C.P.No. 134 of 2019 against him for divorce , permanent alimony and maintenance of their son , in the Court of the learned Judge , Family Court , Bhubaneswar , where he has appeared and filed written statement dated 06.07.2019 . Thereafter in order to harass her , he has filed C.P.No, 48 of 2021 in the Court of the learned Judge , Family Court , Rourkela for restitution of conjugal rights. During pendency of the present TRP (C) , the opposite party has filed C.P.No. 128 of 2022 in the Court of the learned Judge , Family Court, Rourkela claiming custody of their son and for transfer of the C.P. to Bhubaneswar , she has filed TRP (C) No. 235 of 2022 which is listed today . The petitioner and her minor son are residing in Bhubaneswar with her parents and as she has no independent source of income, they are dependent on her parents. As the distance between Rourkela and Bhubaneswar is more than 400 kms., it would be inconvenient for her to go to Rourkela to attend the case. That apart, C.P. No. 134 of 2019 filed by her for divorce is pending in the Court of learned Judge,

Family Court, Bhubaneswar in which the opposite party-husband has appeared , so no inconvenience will be caused to him if C.P. No. 128 of 2022 is also transferred to the Court of learned Judge, Family Court, Bhubaneswar. Both cases should also be heard together by the same judge , to prevent contradictory decisions as the parties and the subject matter in the two proceedings are the same . In support of his prayer for transfer, Mr. B. Parida, learned counsel for the petitioner submits that it is the settled position of law that in matrimonial cases, the convenience of the wife is to be given paramount importance and in case one case is pending in a particular Court involving the same parties and subject matter , to prevent conflicting decisions , both the cases should be heard by the same Judge . He has relied on the following decisions :-

(i) ***Sumita Singh vrs. Kumar Sanjay and another*** reported in ***AIR 2002 SC 396***.

(ii) ***Krishna Veni Nagam vrs. Harish Nigam*** reported in ***(2017) 4 SCC 150***.

(iii) ***Prabhati Pattnaik vrs. Aditya Kumar Pattnaik*** reported in ***2020 (III) ILR CUT 796***.

4. Mr. R. Prusty, learned counsel for the opposite party

opposes the prayer for transfer stating that the petitioner will face inconvenience and expenditure in coming from Rourkela to Bhubaneswar to contest this case as well as other cases pending between the parties as he will have to cover 800 miles to come to Bhubaneswar to attend to all his cases pending there and return to Rourkela. He also apprehends danger to his life if he has to come to Bhubaneswar. This Court should also consider the difficulties which will be faced by him if the case is transferred to Bhubaneswar.

5. Sections 22 to 25 of the C.P.C deal with power of transfer of different Courts. Section – 24 of the C.P.C deals with the power of the High Court and District Court to transfer cases pending in any court subordinate to it and is extracted below :

Section 24. General power of transfer and withdrawal.

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending

in any Court subordinate to it, and-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.]

(4) the Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

6. In the case of ***Sumita Singh*** (supra), the Supreme Court observed that the wife's convenience must be looked into as it was the husband's suit against the wife and considering her difficulties allowed her prayer for transfer .

In the case of ***Anindita Das vs. Srijit Das*** reported in ***(2006) 9 SCC 197***, the Supreme Court observed that as the Court was showing leniency shown to the ladies was being misused as a number of petitions for transfer were being filed for which each petition was required to be considered on its merit. As the husband was willing to pay all the travelling and accommodations expenses of the wife and a companion , the wife's prayer for transfer was rejected by the Supreme Court .

In the case of ***Krishna Veni Nagam*** (supra), the Supreme Court has considered the problems faced by the wife as well as the husband and to take care of their difficulties , the help of technology like video conferencing can be taken

The decision of the Supreme Court in ***Krishna Veni*** (supra) , had been referred to a larger Bench. In its decision in

Santhini vs. Vijaya Venketesh reported in **2017 (II) CLR (SC)**

981. Chief Justice Mishra speaking for the majority answered the reference as follows :

... “56. In view of the aforesaid analysis, we sum up our conclusion as follows :-

(i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

(ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

(iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.

(iv) In a transfer petition, video conferencing cannot be directed.

(v) Our directions shall apply prospectively.

(vi) The decision in Krishna Veni Nagam (supra) is overruled to the aforesaid extent.

Justice Dr D.Y Chandrachud in his dissenting opinion held as follows :

9. *The High Courts have allowed for video conferencing in resolving family conflicts. A body of precedent has grown around the subject in the Indian context. The judges of the High Court should have a keen sense of awareness of prevailing social reality in their states and of the federal structure. Video conferencing has been adopted internationally in resolving conflicts within the family. There is a robust body of authoritative opinion on the subject which supports video conferencing, of course with adequate safeguards. Whether video conferencing should be allowed in a particular family dispute before the Family Court, the stage at which it should be allowed and the safeguards which should be followed should best be left to the High Courts while framing rules on the subject. Subject to such rules, the use of video conferencing must be left to the careful exercise of discretion of the Family Court in each case.*

10. *The proposition that video conferencing can be permitted only after the conclusion of settlement proceedings (resultantly excluding it in the settlement process), and thereafter only when both parties agree to it does not accord either with the purpose or the provisions of the Family Courts Act 1984. Exclusion of video conferencing in the settlement process is not mandated either expressly or by necessary implication by the legislation. On the contrary the legislation has enabling provisions which are sufficiently broad to allow video*

conferencing. Confining it to the stage after the settlement process and in a situation where both parties have agreed will seriously impede access to justice. It will render the Family Court helpless to deal with human situations which merit flexible solutions. Worse still, it will enable one spouse to cause interminable delays thereby defeating the purpose for which a specialised court has been set up.

II The reference should in my opinion be answered in the above terms.”....

This Court in the case of ***Prabhati Pattnaik*** (supra), relying on the decision in ***Krishna Veni***, had observed as follows:

“it will be open to the transferee court to conduct the proceedings or record evidence of the witnesses who are unable to appear in court, by way of videoconferencing.”

The Supreme Court in the recent case of ***N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha : 2022 SCC Online SC 1199***, has inter alia directed that, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

This Court in the case of ***Anuva Choudhury vs. Biswajit***

Mishra (TRP(C) No. 324 of 2017) decided on 05.09.2022 alongwith *Biswajit Mishra vs. Anuva Choudhury (TRP (CRL) No. 98 of 2021)*, after referring to a number of decisions of the Supreme Court and this High Court , has discussed the difficulties which are faced by a husband when transfer applications filed by the wife are allowed without considering the convenience which may be faced by him and held that the convenience and inconvenience of both the parties should be considered and a balanced view adopted .

7. The power of transfer must therefore be exercised with caution and should not be done for the mere asking . The applicant / plaintiff , has the privilege to pick his own forum , the Court should therefore exercise its power so that both parties get a chance to participate in the trial and the principal guiding factor should therefore be the interest of justice.

8. In view of the above discussion , apart from the provisions of Section 24 of the C.P.C and the decisions of the supreme Court and this Court , the following factors have to be considered for deciding the prayer for transfer , namely :

(a) The wife has no independent source of income and is

staying with her parents in Bhubaneswar alongwith her minor son.

(b) The distance between Bhubaneswar and Rourkela is more than 400 Kms.

(c) C.P.No.134 of 2019 filed by the wife for divorce is pending in Bhubaneswar where the opposite party – husband has already appeared and filed his written statement.

(d) As C.P.No. 134 of 2019 and C.P.No. 48 of 2021 involve the same parties and arise out of the same subject matter , to prevent conflict in decisions , C.P.No. 48 of 2021 should be tried by the same Judge .

9. In the facts of the case , as C.P.No. 134 of 2019 is already pending in the Court of the learned Family Judge, Bhubaneswar , in order to prevent conflicting decisions in the two cases , I am of the view that interest of justice would be served if the prayer for transfer is allowed .

10. The learned Judge, Family Court, Rourkela is requested to send the record of C.P. No. 48 of 2021 (**Abinash Mohapatra vrs. Sonaliya Jena**) to the Court of learned Judge, Family Court, Bhubaneswar by 18.11.2022. After which, the Learned Judge, Family Court, Bhubaneswar shall issue notice to

both the parties for their appearance.

11. The apprehension of Mr. Prusty regarding danger to the life of opposite party if the case is transferred to Rourkela appears to be unfounded as he has already appeared in C.P. No. 134 of 2019 and filed his written statement . But this Court cannot turn a blind eye to the inconvenience which will be faced by him to come from Rourkela to Bhubaneswar to contest the case covering 800 kms . The learned Judge, Family Court, Bhubaneswar is therefore directed to post the cases involving the parties on the same date / (s) as far as possible and if there is no other impediment and to complete the proceedings expeditiously.

12. The TRP (C) is accordingly allowed.

13. Registry is directed to send a copy of this order to the Courts of the learned Judge, Family Court, Rourkela and Bhubaneswar by email for compliance.

14. Urgent certified copy of this order be granted as per rules.

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(SAVITRI RATHO)
JUDGE