

IN THE HIGH COURT OF ORISSA AT CUTTACK
TRP (C) No.170 of 2022

<i>Suprabha Jadav</i>		<i>Petitioner</i>
	Mr.Jayadeba Behera, Advocate	
	<i>Versus</i>	
<i>Padma Charan Mohapatra</i>		<i>Opp. Party</i>

CORAM:
JUSTICE SAVITRI RATHO

ORDER
30.06.2022

Order No.

02. This matter is taken up by hybrid mode.
2. Heard Mr.Jayadeba Behera, learned counsel for the petitioner.
3. This transfer petition has been filed by the petitioner under Section 24 of C.P.C. for transfer of C.P. Case No.87 of 2022 filed by the opp. Party who claims to be her husband under Section 22 of Special Marriage Act, 1955 in the Court of learned Judge, Family Court, Bhubaneswar to the Court of learned Judge, Family Court, Sambalpur.
4. Mr. Behera, learned counsel for the petitioner submits that the petitioner has never married the opp. party and she is presently working as staff nurse in the emergency ward at VIMSAR Medical College at Burla and staying with her widow mother at Burla. So, it would be difficult on her part to proceed to Bhubaneswar on each date to contest the case. He further submits that she has already entered appearance in the C.P. Case and it is now posted to July, 2022.
5. C.P. No.87 of 2022 has been filed under Section - 22 of Special Marriage Act, Section – 22 is identical to Section-9 of the Hindu Marriage Act, 1986. Both the sections are extracted below;

Section-9 of the Hindu Marriage Act reads as follows:-

“9. Restitution of conjugal rights. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation.- Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.”

Section 22 of the Special Marriage Act 1954, provides as follows :

“22. Restitution of conjugal rights.—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly

Explanation.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of providing reasonable excuse shall be on the person who has withdrawn from the society.”

6. This Court while disposing of TRP (C) No.157 of 2021 - an application under Section – 24 of the C.P.C. for transfer of an application under Section 9 of the Hindu Marriage Act, by order dated 5.7.2021 has directed as follows :

“Considering that the application under Section 9 of the Hindu Marriage Act needs to be disposed of depending on the wife’s agreement or disagreement to join the husband before the Family Court, this Court is not inclined to entertain the transfer application. It is, in this view of the matter, but however, taking into account that the C.P. proceeding is

instituted at Baripada and the wife-Petitioner is staying at Balasore and for being an unemployed lady, this Court permits the wife-Petitioner to file her response by way of an affidavit through Speed Post with A.D or Registered Post with A.D. addressing to the Registry of the District Court, Baripada , with her contact number therein within a period of ten day hence On production of such affidavit before the Family Court, in the event the wife agrees to join the husband, the Family Court, Baripada is directed to undertake the final hearing of the Civil Proceeding No. 135 of 2020 and close the proceeding by passing appropriate order at least within a period of four weeks thereafter. Further , in the event the wife disagrees to join the husband , the learned Judge, Family Court, Baripada shall first arrange a conciliation process fixing a suitable date for appearance of both the parties. In the event the conciliation process did not materialize, the learned Judge, Family Court, Baripada shall conclude the proceeding as expeditiously as possible preferably within one more date from the date of failure of conciliation, if any, without even insisting appearance of the wife. This Court here makes an observation, in the event the wife is required to move to Baripada to attend the proceeding on the date fixed and there is possibility of engagement of counsel as well as travelling expenses, the husband is directed to deposit a sum of Rs.1000 /- (rupees one thousand) only at least two days prior to the date of posting of the proceeding and the amount be released in favour of the wife on filing appearance memo on the date of posting.”

7. In my opinion, in view of the nature of the case and the inconvenience which will be faced by the petitioner, if she is compelled to personally appear in the case at Bhubaneswar on each date and the delay in disposal of the case if it is directed to be transferred to Sambalpur, instead of directing for transfer of the Civil Proceeding to Sambalpur and at the same time keeping the convenience of the petitioner in mind and in order to ensure expeditious disposal of the proceeding, I direct that the petitioner shall be permitted to file her response in C.P. No. 87 of 2022 (if not already filed) by way of an affidavit through her counsel or sent through Speed Post with A.D or Registered Post with A.D. addressing to the Registry of the District Court, Bhubaneswar giving her contact number therein within a period of two weeks

from today. In case she agrees to join the company of the opp party, the learned Judge Family Court shall finally dispose of the Civil Proceeding No.87 of 2022 by passing appropriate order within a period of four weeks thereafter. In the event the petitioner is not willing to join the opp party, the learned Judge, Family Court, Bhubaneswar shall first make effort for conciliation fixing a suitable date for appearance of both the parties giving enough notice . In the event the conciliation process does not succeed or the parties do not cooperate, the learned Judge, Family Court, Bhubaneswar shall conclude the proceeding as expeditiously as possible preferably within one or two dates from the date of failure of the conciliation, if any, without insisting on the appearance of the wife. In the event the presence of the petitioner is necessary on any date in Bhubaneswar and she expresses her intention to appear personally, she shall be granted sufficient time to enable her to apply for leave from the hospital and the opp party is directed to deposit a sum of Rs.2,500/- (rupees two thousand five hundred) only at least one week prior to the date of positing of the proceeding towards expenses for her travel and stay at Bhubaneswar and the said amount be released in favour of the petitioner in case she personally appears in the case on such date. In case of her non appearance, the amount will be refunded to the opp party.

8. The TRP (C) is disposed of with the aforesaid directions.

9. As the TRP (C) is disposed of without issuing notice to the opp. party-husband, liberty is granted to him to approach this Court for variation/modification of this order in case of utmost necessity.

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

11. A copy of this order be sent to the Court of the learned Judge, family Court, Bhubaneswar by the Registry, at the earliest.

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Savitri Ratho
Judge

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