

IN THE HIGH COURT OF ORISSA AT CUTTACK

TRP(C) No. 189 of 2022

An application under Section – 24 C.P.C for transfer of C.P. No.689 of 2017 from the Court of the learned Judge, Family Court, Cuttack to the Court of learned Judge, Family Court, Kendrapara.

Manini Malik

....

Petitioner

Versus

Prasanta Malik @ Das

....

Opp. Party

Advocates appeared in this case through Hybrid Mode :

For Petitioner : Mr. B. Tripathy, Advocate

For Opp. Party : Mr. S.N.B. Ray, Advocate

CORAM:

JUSTICE SAVITRI RATHO

.....
Date of Judgment : 13.09.2022
.....

Savitri Ratho, J.

I have heard Mr. B.Tripathy, learned counsel for the petitioner and Mr. S.N.B. Ray, learned counsel for the opp. party.

2. This transfer petition under Section 24 of C.P.C. has been filed by the petitioner-wife Manini Malik for transfer of C.P. Case No.689 of 2017 filed by the opp. party-husband under Section

13 (1) 1(a)&(b) of Hindu Marriage Act for a decree of divorce, in the Court of learned Judge, Family Court, Cuttack, to the Court of learned Judge, Family Court, Kendrapara.

3. Pursuant to issue of notice, the opposite-party husband has entered appearance through Mr. S.N.B .Ray Learned counsel and filed an objection after serving copy of the same on learned counsel for the petitioner. The case is taken up for final disposal on the consent of both the counsels.

4. Mr. Das, learned counsel for the petitioner - wife submits that that marriage of the petitioner and opp. party has been solemnized on 04.12.2000 as per Hindu Rites and Customs. He further submits that the petitioner is a destitute and rustic lady and she has no independent source of income and is dependant on her parents and is staying with them at Kendrapara. On account of ill-health of her parents and as her daughter is now studying in Class-X at Kendrapara and her son is studying in Delhi, it would be difficult and inconvenient for her to travel from Kendrapara to Cuttack alone to contest the case as the distance between the two places is about 60 kms. She has lodged an FIR against the opposite party leading to registration of case against him on 30.11.2005 and had also filed Criminal Proceeding No.339 of 2006 under Section 125 of Cr.P.C. in

the court of learned Judge, Family Court, Cuttack, but same has been dismissed for non-prosecution as she could not come to Cuttack to pursue the case. The objection of the opposite party that she is working as an Asha Karmi is another reason for transferring the case as Asha Karmi do not get any salary and only get incentives, based on their achievements.

5. Mr. Ray, learned counsel for the opposite party-husband has filed an objection stating that the prayer for transfer has been made only to linger the case his life is at risk if he goes to Kendrapara. He further submits that the plea of the petitioner that she is totally dependent on her parents is not correct as the information received by the under the RTI Act and annexed to the objection, reveals that she has been engaged as an Asha Karmi. He and his parents have taken care of the education of their son in Kendrapara, Delhi and now he is studying in Maulana Azad Medical College in Delhi. The petitioner has already appeared in C.P. No.689 of 2017 and is contesting the case without any threat or problem. The opposite party is apprehensive of going to Kendrapara as the opp. party and his brother had been threatened by the brother of the petitioner, when they had gone to Kendapara on 16.04.2022 for which he had sent a pleader's notice to her brother by registered post on 26.04.2022. His

final submission is that in case this Court decides to transfer the Civil Proceeding to Kendrapara, direction may be issued for early disposal of the case, so that his client can take precautions while going to Kendrapara only on few dates and his exposure to any threat and inconvenience will be minimized.

6. On perusal of the order sheet of C.P. No.689 of 2017 which had been called for by order dated 28.06.2022, it is apparent that the case is pending since long without much progress and written statement has not been filed.

7. Considering the above submissions and the settled principle of law that convenience of the wife is to be given more weightage in a matrimonial proceeding, it is thought expedient in the interest of justice to transfer the Civil Proceeding from Cuttack to Kendrapara. The learned Judge, Family Court, Cuttack shall transmit the record of Civil Proceeding No.689 of 2017 to the Court of the learned Judge, Family Court, Kendrapara by 28.09.2022. The parties shall appear in the Court at Kendrapara on 15.10.2022 and cooperate for expeditious disposal of the proceeding. The learned Court shall not grant adjournments unless absolutely necessary. Written statement if not filed, will be filed by the petitioner by 22.10.2022 without fail. It is also directed that since the parties have two children, the learned

Judge, Family Court, Kendrapara shall first make an attempt for conciliation between the parties.

8. The TRP(C) is accordingly disposed of.

9. Urgent certified copy of this order be granted on proper application.

.....
(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 13th September, 2022 / Sukanta

