

IN THE HIGH COURT OF ORISSA AT CUTTACK
TRP (C) No.217 of 2022

Priyanka Patra @ Mohapatra ***Petitioner***
Ms.Subhashree Mohanty, Advocate

Versus

Manoj Kumar Patra ***Opposite Party***

CORAM:
JUSTICE SAVITRI RATHO

ORDER
16.09.2022

Order No.
03.

(Through hybrid mode)

1. On 30.08.2022, it was found that A.D. was back from the sole opposite party with signature of one Sarat Chandra Patra without mentioning his relationship and perusal of C.P. No.290 of 2020 revealed that name of the father of the opposite party is Sarat Chandra Patra. However, as no counsel had appeared for opposite party, in the interest of justice the matter was adjourned to 13.09.2022 for admission. Registry had been directed to verify if any counsel had appeared on behalf of opposite party and to indicate the name in the cause title as well as on the top of the brief.
2. Registry has reported that no counsel has appeared on behalf of opposite party. As there was no appearance for the opposite party in the first hour, the matter was passed over and taken up in the second hour. None appears for the opposite party-husband.

3. This application has been filed by the petitioner-wife under Section 24 of C.P.C. for transfer of C.P. No.355 of 2022 instituted by the opposite party-husband under Section 13 of (i) (ii) (iii) of Hindu Marriage Act in the Court of the learned Judge, Family Court, Bhubaneswar to the Court of learned Judge, Family Court, Cuttack.

4. Ms. Mohanty, learned counsel for the petitioner submits that the marriage of the parties had been solemnized in the year, 2007 and a son was born to them in May, 2008 but due to ill-treatment by the opposite party, the petitioner is now living at Cuttack with her widow mother alongwith her minor son who is aged about 14 years old and attending School at Cuttack. Since opposite party is not paying her any maintenance, she is totally dependent on her mother's family pension, as she has no independent source of income. The opposite party had filed C.P. No.290 of 2020 in the Court of learned Judge, Family Court, Cuttack under Section 9 of the Hindu Marriage Act for restitution of conjugal rights wherein after receiving notice the petitioner had appeared in the case and filed an application under Section 24 of the Hindu Marriage Act for payment of interim maintenance. While the said case is pending, in order to harass her, the opposite party-husband has filed C.P. No.355 of 2022 in the Court of the learned Judge, Family Court, Bhubaneswar for divorce and the petitioner has appeared in the said proceeding and the case is now posted for filing of written statement. She also submits that since both the civil proceedings relate to the same parties, in order to prevent contradictory orders, it would be in the interest of justice if C.P. No.355 of 2022 is transferred to the Court of the learned Judge, Family Court, Cuttack and both cases heard together.

5. Considering the above submissions and keeping in mind the settled position of law that convenience of the wife is normally given more weightage in matrimonial cases and C.P. No.290 of 2020 is already pending in the Court of the learned Judge, Family Court, Cuttack, the prayer for transfer of C.P. No.355 of 2022 is allowed.

6. The learned Judge, Family Court, Bhubaneswar is requested to transmit the records of C.P. No.355 of 2022 (***Manoj Kumar Patra v. Priyanka Patra @ Mohapatra***) to the Court of learned Judge, Family Court, Cuttack by 29.09.2022. The petitioner undertakes to appear in the Court of the learned Judge, Family Court, Cuttack on 27.10.2022 on which date C.P. No.290 of 2020 is posted to. Since there is no appearance of the opp. party, the learned Judge, Family Court, Cuttack shall issue notice to the opposite party for his appearance in the C.P. No.355 of 2022. Both parties shall cooperate for early disposal of the case. For convenience of both the parties, as well as the Court, it is directed that both the C.P. cases be posted on the same date and heard together.

7. With the aforesaid observations and directions, the TRP (C) is allowed.

8. Registry is directed to send a copy of this order to the Court of learned Judge, Family Court, Bhubaneswar for compliance.

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

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Savitri Ratho
Judge