

IN THE HIGH COURT OF ORISSA AT CUTTACK

TRP(C) No. 234 of 2022

Prasanika Swain

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Petitioners

Mr. R. Mohanty, Adv.

Vs.

Sorup Kumar Parida

.....

Opposite Party

Mr. Julu Khansama, Adv.

CORAM:

JUSTICE SAVITRI RATHO

ORDER

23.09.2022

Order No.

(Through hybrid mode)

06.

1. Heard Mr. R. Mohanty, learned counsel for the petitioner and Mr. Julu Khansama, learned counsel for the opp. party.

2. By order dated 15.09.2022, when it was brought to the notice of this Court that the case was posted to 20.09.2022 for cross examination of P.Ws. 1, 2 and 3 on recall, the learned Judge, Family Court, had been requested not to proceed with the case further after cross examination of the P.Ws. 1, 2 and 3.

Mr. Julu Khansama, learned counsel for the opp. party files the certified copy of the order dated 20.09.2022 passed in C.P. No. 58 of 2021 by the learned Judge, Family Court, Rourkela which indicates that the recalled witness P.W.1, P.W.2 and P.W.3 were present on that day and they have been further cross-examined by respondent and the case is posted to 29.09.2022 for evidence from the side of respondent. The same be kept in the record.

3. This transfer petition under Section 24 of C.P.C. has been filed by the petitioner-wife for transfer of C.P. Case No.58 of 2021 filed by the opp. party-husband under Section 13 (1) (ia) of Hindu

Marriage Act, 1956 in the Court of learned Judge, Family Court, Rourkela, to the Court of learned Judge, Family Court, Kendrapara. The petitioner had earlier filed TRP(C) No. 437 of 2021 with the self same prayer and same was withdrawn by order dated 15.03.2022, pursuant to a Memo filed by the petitioner stating that she did not want to press the transfer application and may be permitted to withdraw the same. This was however not indicated in the certificate of the present TRP(C) and was brought to the notice of the Court by learned counsel for the Opp. Party.

4. Mr. Ranjit Mohanty, learned counsel for the petitioner submits that the marriage of the parties was solemnized on 31.05.2017 in Paradeep and on 04.01.2019, they have been blessed with a daughter, but on account of demand for dowry and ill-treatment by the opp. party, the petitioner moved with her daughter to her parents house at Kendrapara. Presently, the petitioner is serving as an Assistant Teacher at Suakati, Keonjhar where she lives in the School quarter and goes every week to Kendrapara to her parents house to meet them and her daughter who is studying in Kendrapara. He further submits that in view of the distance between her place of stay and Rourkela and the distance between Rourkela and Kendrapara which is about 300 km., it is not possible on her part to go to Rourkela on each and every date to contest the case.

5. Mr. Julu Khansama, learned counsel for the opp. party submits that the petitioner has appeared through counsel in Rourkela and in the meanwhile, on the application of the petitioner-wife, three witnesses of the opp. party have been recalled and cross-

examined by the petitioner on 20.09.2022 and now the case is posed to 29.09.2022 for evidence of the petitioner. He further submits that the petitioner is a working lady and she has been coming to Rourkela to contest the case, for which there is no necessity to transfer the case when examination of witnesses have started. He further submits that he apprehends threat to his life if the case is transferred to Kendrapara as he has been threatened by the brother of the petitioner. So if this Court entertains the application for transfer, instead of Kendrapara, the case may be transferred to Keonjhar as the petitioner is working in that District or to Cuttack which is an intermediate place.

6. Considering the above submission and keeping in mind the position of law that the convenience of the wife is to be given more weightage while deciding such applications and at the same time keeping in mind the fact that the petitioner is working at Suakati, in the District of Keonjhar and the opposite party is apprehensive of going to Kendrapara, so even though the petitioner has appeared through counsel in Rourkela and after cross examination of the witnesses of the opposite party, the case is now posted for evidence of the petitioner, I feel that it would be expedient in the interest of justice if the case is transferred to Keonjhar from Rourkela.

7. While the order was being dictated, Mr. Ranjit Mohanty, learned counsel for the petitioner interrupts and submits that the petitioner may be permitted to withdraw the TRP(C).

8. As the TRP(C) has been filed by the petitioner, accepting the prayer of her learned counsel, the TRP(C) is permitted to be withdrawn. In view of the withdrawal, no direction is necessary to

be issued to the learned Judge, Family Court, Rourkela to transfer the records of the case to the Court of the learned Family Judge, Keonjhar.

But considering the fact that the petitioner has to travel to Rourkela to contest the case, it is directed that the learned Judge, Family Court, Rourkela shall not insist on the personal appearance of the petitioner on any date, if her presence is not essential and if any application is filed for examination of her witnesses through video conferencing mode, the same shall be considered in accordance with law.

9. With the aforesaid observations, the TRP(C) is disposed of as withdrawn. Interim orders passed earlier stand vacated.

10 Issue urgent certified copy as per rules.

11. Registry is directed to send a copy of this order to the Court of learned Judge, Family Court, Rourkela.

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(SAVITRI RATHO)
JUDGE