

IN THE HIGH COURT OF ORISSA AT CUTTACK

TRP(C) No.261 of 2022

Ms. Soubhagyabati Nayak ***Petitioner***
Mr. G.K. Acharya, Senior Advocate
Versus
Sri Chandrabhanu Das ***Opposite Party***
Mr. R.K. Prusty, Advocate

CORAM:

JUSTICE SAVITRI RATHO

ORDER

29.09.2022

Order No.

06.

(Through hybrid mode)

1. Heard Mr. G.K. Acharya, learned Senior Advocate appearing on behalf of the petitioner and Mr. R.K. Prusty, learned counsel for the opposite party.
2. This application under Section 24 of the C.P.C. has been filed by the petitioner-wife for transfer of C.P. No. 110 of 2021 filed by the opposite party-husband under Section 13 (1) (i-a) of the Hindu Marriage Act, in the Court of the learned Judge, Family Court, Cuttack, to the Court of learned Judge, Family Court, Keonjhar.
3. Since none had appeared on behalf of opposite party on 08.09.2022, 13.09.2022 and 16.09.2022, order had been passed on 16.09.2022 in the absence of the learned counsel for the opposite party.
4. Vide order dated 16.09.2022, the reasons for satisfaction of the Court to transfer the case to the learned Judge, Family Court, Keonjhar had been recorded in paragraphs 6,7,8 and 9 but the petitioner had been permitted to cross-examine the witnesses of the opposite party as date had been fixed for the same by the learned Judge, Family Court, Cuttack and the latter had been directed not to proceed with the case after such examination.

5. Paragraphs 6, 7, 8 and 9 of the order dated 16.09.2022 passed in the case are reproduced below:-

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6. Mr. Acharya, learned Senior Counsel for the petitioner submits that the petitioner had been compelled to leave her matrimonial house on 27.01.2021 and since then she is staying in her father's house at Joda and that at the time of her marriage, she was serving in one of the Branches of Indusind Bank at Bhubaneswar but was forced to leave her job by the opposite party and his parents and further she was not being allowed to attend the job by going out of the house for which her service was finally terminated. Since December, 2018, she does not have any job and no source of income and is totally dependent on her father who is a retired government servant and they are dependent on her father's pension which is just around Rs.25,000/-. Hence, it is difficult for the petitioner's father to maintain her and also to arrange for her travel from Joda to Cuttack which is more than 300 Kms and one way bus ticket is about Rs.500/- apart from expenses for travelling and fooding. He further submits that the distance between Joda to Keonjhar is about 50 K.Ms., hence it would be convenient if C.P. Case is transferred from the Court of the learned Judge, Family Court, Cuttack to the Court of learned Judge, Family Court, Keonjhar. On account of wrong advice, she had filed C.P.No. 214 of 2021 under Section -9 of the Hindu Marriage Act in the Court of the learned Judge Family Court, Cuttack even though she was staying in Joda and now she has filed transfer applications for transfer of both the civil proceedings

to Keonjhar as she is facing inconvenience and difficulty to come to Cuttack. His further submission is that the opposite party being a business man and financially sound he will not face any difficulty to travel to Keonjhar, if the both the civil proceedings are transferred from Cuttack to Keonjhar and both proceedings are heard together.

7. A counter affidavit has been filed on behalf of the opposite party, wherein it has been stated that there is no cause of action or any valid ground to transfer the Civil Proceeding from Cuttack to Keonjhar and that the petitioner has suppressed the actual fact and present status of Civil Proceeding in the learned Court below. He further states that the petitioner has left the matrimonial house on 27.01.2021 without any cause and is living at Baneikela, P.S., Joda, District:Keonjhar, for which the opposite party has filed Civil Proceeding No.110 of 2021 against her for a decree of divorce and in the cause title her address has been given as Village: Baneikela, P.S., Joda, in the district Keonjhar. But at present the petitioner is staying in Bhubaneswar. Earlier, she was staying in a rented house at Satyanagar, Bhubaneswar and thereafter she shifted to Rasulgarh. At present, the petitioner is staying at GGP Colony, Plot No.L119 at Bhubaneswar. The petitioner is an income tax assessee having source of income of her own and presently working in TATA AIA Life Insurance since 08.06.2021 and her agency code no. is AIL 5396035. It has been further averred in the affidavit that in Civil Proceeding No.110 of 2021, the opposite party has already filed his evidence in shape of affidavit and same document relied upon by him, have been

marked as exhibits by the learned court below and the matter had been posted to 20.08.2022 for cross-examination on behalf of the petitioner (wife). As the petitioner after receiving notice in Civil Proceeding No.110 of 2021 has filed Civil Proceeding No.214 of 2021 praying for relief for restitution of marriage under Section 9 of the Hindu Marriage Act against the opposite party (husband) before the learned Judge, Family Court, Cuttack, both the proceedings are posted together in the same Court in one date for final disposal. On the ground that the petitioner has filed C.P. No.214 of 2021, it has been stated that the petitioner has done so for her own convenience and as she is presently staying in Bhubaneswar, it will be no difficulty for her to attend the Court of learned Judge, Family Court, Cuttack and to contest the case and ultimately prayer has been made for dismissing the transfer application as the petitioner has suppressed the facts and has filed the transfer application with intention to harass the opposite party and to prolong the proceedings.

8. Perused the copy of the petition in C.P. No.214 of 2021 attached to TRP (C) No.262 of 2022, where in the address statement in the cause title as well as in the verification of the affidavit, her address has been indicated as: C/o: Jayanta Kumar Nayak, At:Baneikela, Ward No.2, Block Chhaka (Mahakuda Basti), PO:Baneikela, District: Keonjhar. So the submission of the learned counsel for the petitioner regarding filing of C.P.No. 214 of 2021 in Cuttack on account of wrong advice, has force.

9. *After considering the submissions of the learned counsels and keeping in mind the settled position of law that convenience of the wife is to be given more importance in matrimonial cases, I am convinced that the prayer for transfer of the two civil proceedings should be allowed. But considering the fact that the case was posted for cross examination of the opposite party-husband, I feel that interest of justice would be best served if both the Civil proceedings are directed to be transferred to the Court of the learned Judge, Family Court, Keonjhar after cross-examination of the opposite party-husband is over.*

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6. Today Mr. R.K. Prusty, learned counsel for the opposite party appears and states that due to inadvertence, he was unable to appear on the last three dates and wants to make his submissions opposing the prayer for transfer. He was allowed to do and submits that although the petitioner-wife is staying in Bhubaneswar, to harass the opposite party, she has prayed for transfer of the case to the Court of learned Judge, Family Court, Keonjhar. He further submits that the opposite party had written indicated the address of the father of the petitioner in the C.P. application as he was unaware of the present address of the petitioner and notice had been received not by the petitioner but by her father from which it is apparent that she was not residing in Joda in the District of Keonjhar. He ultimately submits that in case the Court decides to transfer the case to the Court of learned Judge, Family Court, Keonjhar, direction may be issued for expeditious disposal of the proceeding as examination of the opposite party and his witnesses have been completed and the opposite party has to travel from Salepur

to Keonjhar to contest the case which will cause inconvenience to him.

7. From the report dated 28.09.2022 of the learned Judge, Family Court, Cuttack received in this transfer petition, it is apparent that cross-examination of petitioner-husband in C.P. No.110 of 2021 is completed.

8. In view of the reasons indicated in order dated 16.09.2022 (quoted above) and as evidence of the opposite party-husband has been completed, the prayer for transfer is allowed.

9. The learned Judge, Family Court, Cuttack is directed to transfer the records of C.P. No. 110 of 2021 (**Chandrabhanu Das vs. Soubhagyabati Nayak**) to the Court of the learned Judge, Family Court, Keonjhar by 18.10.2022. The parties undertake to appear in the Court of learned Judge, Family Court, Keonjhar on 28.10.2022. Separate order is passed today in TRP(C) No.262 of 2022 to transfer C.P. No. 214 of 2021. In order to mitigate the inconvenience which will be faced by the opposite party who has to come from Salepur to Keonjhar, the learned Judge, Family Court, Keonjhar shall do well to take up the two civil proceedings together as before. The learned Judge, Family Court, Keonjhar is requested to dispose of the proceedings expeditiously and not to grant unnecessary adjournments in the case.

10. The TRP(C) is disposed of with the aforesaid observations.

11. Registry is directed to send a copy of this order to the Court of learned Judge, Family Court, Cuttack forthwith for compliance.

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

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(**Savitri.Ratho**)
Judge

