

IN THE HIGH COURT OF ORISSA AT CUTTACK
TRP (C) No. 289 of 2018

Arati Samal

.... *Petitioner*
Mr.G.K.Rath, Advocate

Versus

Sai Sankar Patanaik @ Shyam
Sundar @ Siku

.... *Opp. Party*
Mr.H.K.Mahanta, Advocate

CORAM:
JUSTICE SAVITRI RATHO

ORDER
06.07.2022

Order No.

11. This matter is taken up by hybrid mode.
2. Mr. N.Lenka, Mr.H.K.Mahanta and Mr.P.K. Barik, learned counsels have filed Vakalatnama on behalf of the opp. party-husband, which is taken on record.
3. This application has been filed by the petitioner-wife under Section 24 of C.P.C. for transfer of MAT Case No.21 of 2017 filed by the petitioner under Section-9 of the Hindu Marriage Act, 1956 in the Court of learned Civil Judge (Senior Division), Koraput, to the Court of learned Civil Judge (Senior Division), Hindol.
4. Learned counsel for the petitioner submits that without disclosing that the opp. party was earlier married, the latter had married the present petitioner and thereafter he and his family members ill-treated the petitioner, for which the petitioner had filed MAT Case No.21 of 2017 and DV Misc Case in Koraput . But thereafter, she was unable to stay in Koraput and moved to her father's house at Hindol. The petitioner has no independent source of income and as the opp. party is not paying her any maintenance, she is staying at Hindol and is dependent on her father for her day to day

expenses. He also submits that the petitioner has filed TRP (CRL) No.105 of 2018 for transfer of D.V. Misc. Case No.95 of 2017 initiated by her in the Court of learned S.D.J.M., Koraput to the Court of learned S.D.J.M., Hindol on the same ground, and the said case is listed today along with this case. He also draws the attention of this Court to paragraph-10 of ABLAPL No.1131 of 2018, which is annexed as Annexure-2 to this TRP(C) where it is stated that the petitioners are permanent resident under Balami Police Station (which he says is a typographical error for “Balimi”) and Balimi is in Dhenkanal District. He further submits that as settled by Hon’ble Supreme Court, the convenience of the wife is to be given more importance in matrimonial cases.

5. Mr. Mahanta, learned counsel for the opp. party-husband submits that the MAT case has been filed at the instance of the petitioner in Koraput and only in order to harass the opp. party-husband, she has filed this application for transfer of the case to Hindol. He further submits that it would be inconvenient for the opp. party-husband and his witnesses to travel all the way to Hindol to defend the case and they are likely to be harassed if they go to Hindol. He further submits that the convenience of both the parties should be kept in mind while adjudicating a case of transfer. He also submits that keeping in mind the direction of this Court in TRP (C) No.157 of 2021 disposed of on 05.07.2021 involving transfer of a case under Section - 9 of the Hindu Marriage Act and other similar cases, the opp. party-husband be permitted to submit his reply by post or through his counsel and his personal appearance may not be insisted upon by the Court.

6. Taking into consideration the submissions of the counsels, the convenience of both the parties , MAT Case No.21 of 2017 is directed to be transferred to Dhenkanal to the Court of the learned Judge, Family Court, Dhenkanal instead of Hindol. Let both the parties appear before the Court of learned Judge, Family Court, Dhenkanal on 03.08.2022 either in person or through their counsel and co-operate with the Court for early disposal of the case.

7. In view of the nature of the case where personal appearance of the opp. party may not be necessary on each date, while transferring the case to Dhenkanal, I direct that the opp. party husband shall be permitted to send his response / written statement in MAT Case No.21 of 2017 (if not already filed) by way of an affidavit through his counsel or through Speed Post with A.D or Registered Post with A.D. addressed to the Registrar of the District Court, Dhenkanal giving his contact number therein by 25.07.2022. In case he agrees to join the company of the petitioner, the learned Judge Family Court shall finally dispose of the case by passing appropriate order within a period of four weeks thereafter. In the event the opp. party is not willing to join the petitioner, the learned Judge, Family Court, Dhenkanal shall first make effort for conciliation fixing a suitable date for appearance of both the parties. In the event, the conciliation process does not succeed or the parties do not cooperate, the learned Judge, Family Court, Dhenkanal 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 personal appearance of the parties. The learned Civil Judge, (Senior Division), Koraput is requested to send the case records to the court of the learned Judge, Family Court, Dhenkanal by 25.07.2022.

8. With the aforesaid observations and directions, the TRP (C) is disposed of.
9. Urgent certified copy of this order be granted as per rules.
10. Registry shall send a copy of this order to the Court of the learned Civil Judge (Senior Division), Koraput forthwith.

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Savitri Ratho
Judge

Bichi

