

IN THE HIGH COURT OF ORISSA AT CUTTACK

TRP(C) No.396 of 2021

Sujata Mallik

....

Petitioner

-versus-

Sandeep Kumar Mallik

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

16.02.2022

Order

No.

03.

1. This matter is taken up through hybrid mode.
2. This petition has been filed by the Petitioner for transfer of C.P. No.186 of 2021 instituted at the instance of the Opposite Party-husband from the file of the learned Judge, Family Court, Puri to the Court of Judge, Family Court, Bhubaneswar on the ground of threat to her life.
3. Heard the learned counsel appearing for the Petitioner and the learned counsel for the Opposite Party.
4. Learned counsel for the Petitioner relying on the decisions of the Apex Court in the cases of *Krishna Veni Nagam v. Harish Nagam* decided on 9th March, 2017 in Transfer Petition (Civil) No. 1912 of 2014 and *Gana Saraswathi v. H. Raghu Prasad, reported in (2000) 10 SCC 277*, has sought for transfer of the aforesaid case from

the Court of Judge, Family Court, Puri to the Court of Judge, Family Court, Bhubaneswar.

5. In the case of *Krishna Veni Nagam* (supra), the Apex Court at paragraphs-13 and 14 have held as follows:-

“13. We have considered the above suggestions. In this respect, we may also refer to the doctrine of forum non conveniens which can be applied in matrimonial proceedings for advancing interest of justice. Under the said doctrine, the court exercises its inherent jurisdiction to stay proceedings at a forum which is considered not to be convenient and there is any other forum which is considered to be more convenient for the interest of all the parties at the ends of justice. In Modi Entertainment Network and anr. v. W.S.G. Cricket Pte. Ltd.⁹ this Court observed:

“19. In Spiliada Maritime¹⁰ case the House of Lords laid down the following principle:

“The fundamental principle applicable to both the stay of English proceedings on the ground that some other forum was the appropriate forum and also the grant of leave to serve proceedings out of the jurisdiction was that the court would choose that forum in which the case could be tried more suitably for the interest of all the parties and for the ends of justice.”

The criteria to determine which was a more appropriate forum, for the purpose of ordering stay of the suit, the court would look for that forum with which the action had the most real and substantial connection in terms of convenience or expense, availability of witnesses, the law governing the relevant transaction and the places where the parties resided or carried on business. If the court

concluded that there was no other available forum which was more appropriate than the English court, it would normally refuse a stay. If, however, the court concluded that there was another forum which was prima facie more appropriate, the court would normally grant a stay unless there were circumstances militating against a stay. It was noted that as the dispute concerning the contract in which the proper law was English law, it meant that England was the appropriate forum in which the case could be more suitably tried.”

Though these observations have been made in the context of granting anti suit injunction, the principle can be followed in regulating the exercise of jurisdiction of the court where proceedings are instituted. In a civil proceeding, the plaintiff is the dominus litis but if more than one court has jurisdiction, court can determine which is the convenient forum and lay down conditions in the interest of justice subject to which its jurisdiction may be availed.

14. One cannot ignore the problem faced by a husband if proceedings are transferred on account of genuine difficulties faced by the wife. The husband may find it difficult to contest proceedings at a place which is convenient to the wife. Thus, transfer is not always a solution acceptable to both the parties. It may be appropriate that available technology of video conferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties. We understand that in every district in the country video conferencing is now available. In any case, wherever such facility is available, it ought to be fully utilized and all the High Courts ought to issue appropriate administrative instructions to regulate the use of video conferencing for certain category of cases. Matrimonial cases where one of the parties resides outside court's jurisdiction is one of such categories. Wherever one or both the parties make a request for use of video conference, proceedings may be conducted on video conferencing, obviating the needs of the party to appear in person. In several cases, this Court has directed recording of evidence by video conferencing.”

6. In the case of *Gana Saraswathi* (supra), which was a case relating to transfer of the divorce proceeding filed by the wife from the Court of the Sub-Judge, Adoni, Andhra Pradesh to the Court of IInd Additional Family Judge, Chennai.

7. However, it is not in dispute that the distance between Puri and Bhubaneswar is not far. The same can be covered within one and half hours in public transport also and also the frequency of the public transport are hardly 45 minutes.

8. Hence, it cannot be said that inconvenience caused to the Petitioner in any manner to attend the Court at Puri. Therefore, the law laid down in the case of *Krishna Veni Nagam* (supra) is of no assistance to the present Petitioner, so also the case of *Gana Saraswathi* (supra) was rendered in different facts and circumstances.

9. Therefore, I am not inclined to allow the prayer made by the Petitioner on the ground stated.

10. Accordingly, the TRP(C) stands dismissed.

11. However, learned counsel for the Petitioner has further stated that the Petitioner apprehends danger in

appearing the Court at Puri, but no material is produced with regard to the same.

12. But, taking note of the submission, it is directed that if the Petitioner make an application in advance to the S.P. concerned before the date of appearing in the Family Court at Puri in order to enable the S.P. concerned to assess the threat perception on her and if the same is there, the S.P. concerned will provide necessary protection on that date.

13. So also Petitioner being a distress lady, she is at liberty to make a prayer before the Court concerned with regard to the expenses incurred by her and in that event the Court concerned shall pass necessary order in this regard.

(S. Pujahari)
Judge

DA