

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2736 of 2018

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Ragini Priya Wife of Narendra Pandit Resident of Village Mafi, P.O. and P.S.-
Wrisaliganj, District- Nawada D/o Late Tarkeshwar Kumar, at present
residing at Village- Makhdumpur, P.O. and P.S.- Beur (Anisabad), District-
Patna- 800002.

... .. Petitioner/s

Versus

Narendra Pandit Son of Arjun Pandit Resident of Village- Mafi, P.O. and P.S.-
Wrisaliganj, District- Nawada.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shyam Nandan Thakur, Advocate

For the Opposite Party/s : Mr. Rajeev Nayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 27-09-2023

Heard Mr. Shyam Nandan Thakur, learned counsel
appearing on behalf of the petitioner and Mr. Rajeev Nayan,
learned counsel for the opposite party.

2. The petitioner by filing the present application
under Section 24 of the Code of Civil Procedure, 1908 seeking
transfer of Matrimonial Case No. 368 of 2017 from the court of
Principal Judge, Family Court, Nawada to the court of Principal
Judge, Family Court, Patna or any other appropriate court.

3. It is submitted on behalf of the petitioner that the
marriage of the petitioner was solemnized with the opposite
party on 06.06.2014 at village Makhdumpur, P.O. and P.S. Beur
Anisabad, Patna. However, soon after the marriage, she was
subjected to demand of dowry and on account of non-fulfillment



of the same, she was tortured in various ways and finally ousted from her matrimonial home. The petitioner also filed a complaint bearing Complaint Case No. 1949 of 2018 which is at present pending before the learned S.D.J.M., Patna. He further submits that after ousting the petitioner from her matrimonial home, the opposite party in a planned manner filed Matrimonial Case No. 197 of 2016 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal right before the Principal Judge, Family Court, Nawada and by suppressing all the notice and summons, issued to the petitioner, any how obtained ex parte order on 17.06.2017. The petitioner being aggrieved, has filed Miscellaneous Appeal No. 651 of 2018 for recalling the aforementioned *ex parte* order, the same is pending consideration.

4. Learned counsel for the petitioner further submits that having been embolden by getting the ex parte order as noted hereinabove, the opposite party, surreptitiously, filed divorce case No. 368 of 2017 under Section 13(1) of the Hindu Marriage Act, 1955 for a decree of divorce by mentioning incorrect address, however, she anyhow came to know with regard to the filing of the aforementioned divorce case, when the opposite party responded to her legal notice.

5. Further submission has been made that the



petitioner is a Panchayat Teacher at Hasanpur Primary School, Patna and has been imparting teaching to the students. That apart, she is living with her parents at her paternal house and thus pursuing the case at Nawada would certainly cause immense inconvenience, apart from lots of mental trauma and financial problems. Learned counsel for the petitioner also submitted that she is also facing threat to her life and property, and if she would be allowed to pursue her case at Nawada, there is every chance of her being assaulted by the opposite party and his family members.

6. On the other hand, learned counsel for the opposite party refuted all the contentions of the petitioner and submits that the opposite party had always been ready to keep the petitioner and thus he had filed a petition for restitution of conjugal right under Section 9 of the Hindu Marriage Act *vide* Matrimonial Case No. 197 of 2016 but despite knowing very well about the pendency of the case, she never chose to appear which resulted into ex parte order. However, she never returned to her matrimonial home, thus, left with no option, the opposite party filed Matrimonial Case No. 368 of 2017 before the learned court of Principal Judge, Family Court, under Section 13(1) of the Hindu Marriage Act for a decree of divorce. The improper



conduct of the petitioner is also evident from the fact, that when she came to know about the pendency of divorce case, she immediately filed Complaint Case No. 1949 of 2018 under Sections 498(A), 494, 120(B) and other analogous sections of the Indian Penal Code, only with a view to spite him and his family members.

7. Before parting with the final outcome, it would be worth noting that in the matter of transfer of divorce case from one place to another place, the point is well settled that the paramount consideration is the convenience of the wife. The Hon'ble Apex Court in the case of ***Sumita Singh vs. Kumar Sanjay*** since reported in (2001) 10 SCC 41 has highlighted the aforesaid issue. There are decisions of this Court on similar issue in the case of ***Kumari Archana @ Rina v. Ajit Ranjan*** reported as 2010(4) PLJR 848 and in the case of ***Smt. Prabha Gupta @ Munni vs. Santosh Kumar*** reported as 1996(2) PLJR 425 where this Court having considered the possible hardship and inconvenience of the lady, who is sought to be divorced in having to travel frequently to a distant place in order to defend the case filed against her, passed the order for transfer of pending suit from the court of the District Judge of one district to that of another district. It would also be required to be



noted that the present matter is pending since 2018 but till date no counter affidavit has been filed on behalf of the opposite party.

8. From the materials available on record, it appears that admittedly, Complaint Case No. 1949 of 2018 filed by the petitioner is pending before the court of the learned S.D.J.M. at Patna and the opposite party has already entered his appearance, that apart the petitioner has been living alone along with her old parents and in course of hearing of Matrimonial Case No. 368 of 2017, she has to travel more than 100 kilometres only from one side, which would certainly cause inconvenience to the petitioner.

9. Considering the averments made in the present petition, submissions advanced on behalf of the parties and the legal position as discussed hereinabove, this Court finds merit in the submissions of the petitioner and thus in the interest of justice, the divorce case *vide* Matrimonial case No. 368 of 2017 stands transferred from the court of Principal Judge, Family Court, Nawada to the court of Principal Judge, Family Court, Patna. It is made clear that on receipt/production of a copy of this order, the record of the case shall be sent to the Principal Judge, Family Court, Patna forthwith. Upon receipt of the



records, the learned Principal Judge, Family Court, Patna shall issue notice to the parties fixing a date in the case and shall take all endeavours to conclude the matrimonial case as expeditiously as possible, preferably within a period of one year. It is also expected that both the parties will co-operate in disposal of the matrimonial case.

10. The present application stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	05 .10.2023
Transmission Date	N.A.

