

GAHC010232832025



2026:GAU-AS:2235

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Tr.P.(C)/71/2025

1. Sukanya Baruah,
D/o-Dr. Ranjit Kr. Baruah,
Presently, R/o-Irving, Texas, USA,
Permanent R/o- West Milan Nagar, Lane
K, Dibrugarh,
P.S. Milan Nagar Outpost,
P.O. CR Building, Assam, Pin-786003.

.....Petitioner

-Versus-

1. Arpan Barua,
S/o-Retd. Prof. Bhaben Barua,
Present R/o- C/o- Monita Bharali,
H/No. 4A, Dr. JC Das Road, Panbazar,
Guwahati,
P.O. Guwahati GPO,
P.S. Panbazar, Kamrup Metro,
Assam, Pin-781001.

.....Respondent

For Petitioner	:	Mr. F. Khan, Advocate
For Respondent	:	Ms. S. Parveen, Advocate
Date of Judgment	:	05.12.2025
Reserved	:	
Date of Judgment	:	16.02.2026

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT AND ORDER (CAV)

- [1]** Heard Mr. F. Khan, the learned counsel for the petitioner. Also heard Ms. S. Parveen, the learned counsel for the respondent.
- [2]** This application under Section 24 of the Code of Civil Procedure, 1908, has been filed by the petitioner, Smt. Sukanya Baruah, praying for transfer of F.C.(Civil) Case No.1145/2025, filed by the respondent, who is her husband, seeking divorce from her, before the learned Principal Judge, Family Court No. 1 at Guwahati, to the court of District Judge at Dibrugarh, Assam.
- [3]** The facts relevant for consideration of the instant transfer application, in brief, are that the petitioner was married to the respondent on 09.07.2015 at Dibrugarh, under the provisions of Special Marriage Act, 1954. The marriage was followed by a wedding reception at Dibrugarh on 10.07.2015, as well as another wedding reception organized at Guwahati on 12.07.2015. After their marriage, both the parties lived together as a couple in Singapore and thereafter in the United States of America. It is contended by the petitioner in her application that the respondent has been employed with CBRE in Dallas, Texas since October 2021 and the petitioner accompanied him on a L-2 dependent Visa. It is also contended by the petitioner that she has resigned from her independent employment at Amazon Singapore for the sake of a stable married life, with the respondent, in the United States of America.

- [4]** It is further contended that the respondent willfully deserted the petitioner on 22.08.2025, leaving her alone in a foreign country, in a state of financial, emotional and legal vulnerability. Thereafter, the respondent instituted a divorce suit before the Principal Judge Family Court No.1, Kamrup (Metro), which was registered as F.C.(Civil) Case No. 1145/2025. Thereafter, on 17.10.2025, the petitioner had to return to her paternal home at Dibrugarh from the United States of America. It is also contended that she is unemployed and financially dependent and struggling to recover from humiliation and emotional distress caused by the respondent.
- [5]** The learned counsel for the petitioner has submitted that the petitioner is presently unemployed and staying with her parents in Dibrugarh and is dependent on her parents for her sustenance and it would be extremely difficult on her part to travel from Dibrugarh to Guwahati to attend the divorce proceeding instituted by the respondent at Guwahati.
- [6]** The learned counsel for the petitioner submits that the distance between Guwahati to Dibrugarh is more than 445 kilometers, involving about 10 to 12 hours of road travel for one way, as such, attending the divorce proceedings at Guwahati would be extremely onerous on the part of the petitioner.
- [7]** The learned counsel for the petitioner submits that since the marriage between the parties was conducted in Dibrugarh and the paternal home of the petitioner is at Dibrugarh where she is presently residing permanently, it is the Dibrugarh Court which has the jurisdiction to try this divorce proceeding. The learned counsel

for the petitioner has also submitted that the Family Court at Guwahati does not have the jurisdiction to entertain the divorce case filed by the respondent in view of the provisions contained in Section 31 of the Special Marriage Act, 1954. He submits that the respondent had deserted the petitioner by leaving her alone in the United States of America and had come to Guwahati only for the purpose of filing the divorce suit. Hence, he may not be allowed to take advantage of Section 31 (1) (iv) of the Special Marriage Act 1954 as it would amount to allowing the respondent to take advantage of his own wrong committed upon the petitioner by deserting her in a foreign country.

- [8] He submits that the petitioner would be comparatively in a disadvantageous position if she is allowed to defend her divorce suit by coming to Guwahati on each and every day. He further submits that as the divorce suit has been filed by the respondent against the petitioner, who is the wife, her convenience must be looked into while deciding this transfer petition. In support of his submission, the learned counsel for the petitioner has cited a ruling of the Apex Court in the case of "***Sumita Singh Vs. Kumar Sanjay And Anr.***" reported in "***(2001)10 SCC41.***"
- [9] The learned counsel for the petitioner has also submitted that the petitioner has also instituted proceeding under Protection of Women from Domestic Violence Act, 2005 against her husband at Dibrugarh. He submits that since proceeding under Protection of Women against Domestic Violence Act, 2005 and maintenance proceeding under 144 of BNSS, 2023 are pending against the respondent at Dibrugarh, it would be convenient if all the cases are

tried at a single place. In support of his submission, the learned counsel for the petitioner has cited rulings of Apex Court in the case of "**N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha**" reported in "**2022 SCC OnLine SC 1199.**" As well as in the case of "**Ruchi Rawat Vs. Principal Judge, Family Court, Etah and another**" reported in "**2022 SCC Online SC2036.**"

- [10]** He has also submitted that the respondent does not stay at Guwahati rather he works at United States of America which may be verified from the submissions made by his engaged counsel before this court in connection with Criminal Petition No. 1363/2025 on 12.11.2025 when the engaged counsel had made a submission that the respondent has left for United States of America and he may not be able to sign the additional affidavit on that day, which itself shows that the respondent came to Guwahati only for the purpose of filing the divorce suit against the petitioner and he is not residing at Guwahati which is a requirement for availing the benefit of Section 31 (1)(iv) of the Special Marriage Act 1954.
- [11]** The learned counsel for the petitioner has submitted that since the respondent works in the United States of America, for him it may not matter as to whether the divorce case is conducted at Dibrugarh or at Guwahati as he may attend the court by availing the video conferencing facility when the matter is transferred to the Dibrugarh court. He submits that as in Dibrugarh court the matter would be taken up by the court of learned District Judge where the parties may appear through lawyers. He that on the other hand, there is a restriction of appearance of lawyers before the Family Court and attendance of the parties is required there, which would be

cumbersome on the part of the petitioner to travel such a long distance only for the purpose of attending the divorce proceeding. He submits that the distance between the place where the petitioner is presently residing and the place where the divorce suit is instituted is a relevant factor while considering the transfer application. In support of his submissions, the learned counsel for the petitioner has cited a ruling of the Apex Court in the case of **"Vaishali Shridhar Jagtap Vs. Shridhar Vishwanath Jagtap"** reported in **"(2016)14 SCC 356."**

- [12]** The learned counsel for the petitioner has submitted that in the divorce case filed by the petitioner before the Family Court, he has stated that he is currently working at CBRE USA, a multinational company headquartered at Dallas, Texas USA and as per his own averment made in the divorce petition (paragraph No. 42), he came to India, on 21.08.2025, only to file a divorce case against the petitioner. Under such circumstances, he submits, that the Family Court at Guwahati does not have jurisdiction to try the divorce case and this is a fit case where the F.C.(Civil) Case No. 1145/2025 may be transferred to the court of learned District Judge at Dibrugarh.
- [13]** On the other hand, Ms. S. Parveen, the learned counsel for the respondent has submitted that the petitioner has approached this court with unclean hands and suppressed the material facts solely with an intention to harass the respondent, therefore, the petition may be dismissed.
- [14]** The learned counsel for the respondent has submitted that the petitioner has deliberately misstated her place of residence as

Dibrugarh, Assam, whereas she continues to live in Texas, United States of America, which may be ascertained from the order passed in the maintenance case filed by her under Section 144 of BNSS, as well as another case under the provisions of Protection of Women from Domestic Violence Act, which are pending before the Court of learned Chief Judicial Magistrate, Dibrugarh. She submits that in both the cases, the petitioner has sought permission of the court to appear in the case through video conferencing on the ground that she was presently residing in Texas, USA, and leaving India on 26.10.2025.

- [15]** The learned counsel for the respondent has further submitted that even the petitioner may also appear before the Family Court through video conferencing facilities as the Family Court at Guwahati have such facilities.
- [16]** The learned counsel for the respondent has also submitted that the allegation against the respondent by the petitioner that he has deserted her are not true as the relationship between the petitioner and the respondent were not like that of between husband and wife since October 2021. He also submits that the respondent is a financially independent individual person and she worked with Amazon USA with annual income exceeding Rs. 1 crore and is holding Amazon stock options. She submits that the instant transfer application has been filed only with the intention to delay the divorce proceedings and harass the respondent.
- [17]** In support of her submissions, the learned counsel for the respondent has cited the following rulings:-

- i. **"Preeti Sharma v. Manjit Sharma"** reported in **"(2005) 11 SCC 535;"**
- ii. **"Gargi Konar Vs. Jagjit Singh"** reported in **"(2005) 11 SCC 446;"**
- iii. **"Anindita Das v. Srijit Das"** reported in **"(2006) 9 SCC 197;"**
- iv. **"Brijal Mehul Shah Vs. Mehul Kumudbhai Shah"** (Transfer Petition (Civil) No. 2949/2022)
- v. **"Neeta Kumari v. Sanjay Kumar"** (Transfer Petition (Civil) No. 2466 of 2024)
- vi. **"Naivedya Associates Vs. Kriti Nutrients Ltd."** 2021 SCC Online SC 3284"

[18] I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

[19] After considering the respective pleadings of both the parties, as well as the submissions made by the learned counsel for both sides, it appears that the petitioner has approached this court for transfer of F.C. (Civil) Case No. 1145/2025, from the Family Court No. 1 at Guwahati, to the court of learned District Judge Dibrugarh, on the ground that the petitioner, who is a lady, is unemployed and presently residing at Dibrugarh, along with her parents and it would be onerous on her part to travel more than 445 kilometers from Dibrugarh to Guwahati on each and every day to attend proceedings

before the Family Court at Guwahati. The second main contention of the petitioner is that, since the respondent works in a US firm, and since from the pleadings made by him in the divorce case, it appears that he came to Guwahati only for the purpose of filing the divorce case. Hence, the Family Court at Guwahati does not have jurisdiction to entertain the divorce case under Section 31(1)(iv) of the Special Marriage Act, 1954.

[20] Let us first consider the plea regarding the objection of the petitioner as regards the jurisdiction of the Family Court to entertain the divorce case filed by the respondent. This court is of the considered view that since the question regarding jurisdiction of the Family Court under Section 31 (1)(iv) of the Special Marriage Act, 1954, can be decided only on the basis of facts which are required for invoking jurisdiction under the said provision. Since the said facts are disputed by both the parties, in the considered opinion of this Court, it would be appropriate for the trial court to decide any such issues as regards jurisdiction, if raised by any of the parties. It may not be appropriate for this court, while entertaining an application under Section 24 of the Code of Civil Procedure, 1908 to decide disputed questions of facts for deciding as to whether the trial court has jurisdiction or not. If the petitioner has any grievance regarding the jurisdiction of the Family Court to entertain the divorce case filed by the respondent, said question may be raised by her before the Family Court.

[21] Further, the questions as to whether the petitioner permanently resides at Dibrugarh and whether the respondent permanently resides at Guwahati, are also disputed questions of facts, as both

the parties have raised objections against the claim of each other regarding their place of residence. Hence, this issue is also in the considered opinion of this court, would be appropriate to be agitated before the trial court.

[22] After considering the materials on record, this court is of considered opinion that, since the petitioner had sought leave of the court, before which the cases filed by her under Protection of Women from Domestic Violence Act, 2005 as well as under Section 144 of the BNSS, 2023 for Maintenance, to appear before the court, through video conferencing, on some occasions, she can do so even in the divorce case pending before the Family Court at Guwahati. It would certainly mitigate the inconveniences which she is apprehending. Moreover, the respondent has admitted that presently petitioner does not have any employment, hence, she may be compensated for the expenses incurred by her in attending the divorce proceeding at Guwahati.

[23] Hence, in view of the discussions made in the foregoing paragraphs, this court is of considered opinion that the petitioner has not been able to show good ground for transfer of the divorce case pending before the Principal Judge, Family Court No. 1, Guwahati to Dibrugarh.

[24] Accordingly, the instant Transfer Petition is dismissed. However, considering the submissions made by learned counsel for both sides, this court hereby direct that, whenever the petitioner is required to personally attend the trial court, at Guwahati, in connection with F.C.(Civil)Case No. 1145/2025, the respondent shall

pay travel expenses, from Dibrugarh to Guwahati and back, to her as may be fixed by the trial court in this regard.

[25] With the above observation, this Transfer Petition is dismissed.

JUDGE

Comparing Assistant

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