

(2024) 06 GAU CK 0005

Gauhati High Court

Case No: Tr.P.(C). No. 75 Of 2017

Mrinali Goswami
Bhattacharya

APPELLANT

Vs

Amrit Ranjan
Bhattacharya

RESPONDENT

Date of Decision: June 4, 2024

Acts Referred:

- Code of Civil Procedure, 1908 - Section 24

Hon'ble Judges: Sanjay Kumar Medhi, J

Bench: Single Bench

Advocate: D Hazarika, R Sharma, Md. A Hussain

Final Decision: Disposed Of

Judgement

1. The instant petition has been presented under Section 24 of the Code of Civil Procedure (CPC), praying for transfer of Title Suit (M) No.19/2017

from the Court of the learned District Judge, Tinsukia to the appropriate Court at Jorhat (District Judge).

2. The facts projected in the petition are that the marriage of the petitioner was solemnized with the respondent on 05.10.2005 at Jorhat. However, the

respondent being employed at Doom Dooma, the matrimonial house was at Tinsukia. On 20.11.2006, a son was born out of the wedlock and at the

time of presentation of this petition in 2017, the son was a student of Class-V.

3. The respondent had instituted the aforesaid title suit for divorce before the learned District Judge, Tinsukia. It is contended that prior to such

institution of the divorce proceeding, the petitioner had filed a petition for maintenance before the Addl. Chief Judicial Magistrate, Jorhat, being

Maintenance Case No. 41/2016 in which, order towards payment of maintenance at the rate of Rs. 6,000/- was passed on 06.10.2016. It is the

categorical case of the petitioner that she is residing at Jorhat at her parental home having aged parents and the minor son who is attending school at

Jorhat. There are no male members in the family except her aged father and accordingly, the present petition has been presented.

4. I have heard Shri R Sharma, learned counsel for the petitioner. Though notice was issued in this case way back on 23.10.2017, the respondent has not appeared.

5. In fact, in a subsequent order dated 06.03.2020, this Court had accepted the note dated 28.02.2020 of the learned Lawazima Court regarding

completion of service upon the sole respondent. This Court has also noticed that in the initial order dated 23.10.2017 by which the notice was issued,

further proceedings of TS No. 19/2017 was kept under suspension and the said interim order was continued which is presently in operation.

6. The learned counsel for the petitioner has submitted that the minor son is attending his school (Central School) at Jorhat and it is only the petitioner

who is to take care of him in all the activities. It is further submitted that it is absolutely difficult on the part of the petitioner to attend the proceedings

at Tinsukia as the distance from Jorhat to Tinsukia is about 200 kilometers. It is submitted that the respondent-husband, on the other hand, is a

government servant and can afford to conduct the case at Jorhat if the prayer made in the petition is allowed. The aspect of lack of any other male

members in the parental house of the petitioner except her aged father has also been highlighted.

7. As observed above, the respondent has chosen not to contest this case in spite of receipt of notice and from 2017, the proceeding is at a standstill

because of the interim order which is, perhaps not in the interest of justice. However, in spite of the fact that the present petition has not been

contested, this Court is required to look into the reasons assigned for justifying the present prayer.

8. The petition is presented by the wife, who has a minor son and is presently staying at her parental home at Jorhat. Without even going to the inter

se merits of the respective parties which would be decided by the appropriate Court on the aspect as to whether a decree of divorce is to be granted

or not, this Court is of the opinion that interest of justice would be served if the proceedings in TS (M) No.19/2017 are transferred from the Court of

the learned District Judge, Tinsukia to the Court of the learned District Judge, Jorhat. This Court has also taken into consideration that, as observed

above, the stay of the proceedings, which is continuing from the last more than 7 years, is benefiting none.

9. In view of the above discussions, the present petition is allowed and the proceedings in TS (M) No. 19/2017, pending in the Court of the learned

District Judge, Tinsukia be transferred to the Court of the learned District Judge, Jorhat. On receipt of the records, the learned District Judge, Jorhat is

to issue notice to the respective parties, more particularly, the respondent herein who is the first party as the said respondent is not present at the time

of adjudication of this case and passing of the present order.

10. The petition is accordingly disposed of.

11. Cost made easy.