



GAHC010154572023

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Tr.P.(C)/60/2023

DR. CHAYANIKA KALITA
W/O DR. LOHIT CH. KALITA, R/O H/NO. 5, APURBA PATH, JAPORIGOG,
GANESHGURI, GUWAHATI-781005, KAMRUP (M), ASSAM

VERSUS

DR. LOHIT CH. KALITA
S/O LATE CHANDRA KANTA KALITA, R/O FLAT NO. A1, B AND B COURT,
SUNDERPUR BYE LANE 2, JAPORIGOG, GUWAHATI-781005, KAMRUP (M)

Advocate for the Petitioner : J SHARMA

Advocate for the Respondent : MR. R K BHUYAN

Linked Case : Tr.P.(C)/62/2023

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W/O DR. LOHIT CH. KALITA
R/O H/NO. 5
APURBA PATH
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KAMRUP (M)

Advocate for : J SHARMA
Advocate for : MR. R K BHUYAN appearing for DR. LOHIT CH. KALITA

Linked Case : Tr.P.(C)./61/2023

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B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocates for the petitioner : Shri J. Sharma, Advocate

Advocates for respondents : Shri R.K. Bhuyan, Advocate.

Date(s) of hearing : 20.07.2023

Date of judgment : 20.07.2023

Heard Shri J. Sharma, learned counsel for the petitioner. Also heard Shri RK Bhuyan, learned counsel for the respondent.

2. The present three applications have been filed under Section 24 of the Code of Civil Procedure for transfer of three cases pending in the Court of Principal Judge, Family Court No. 1, Kamrup (M), Guwahati. The petitioner herein is the wife of the respondent-husband.

3. A brief details of the cases is given as follows:

(i) Tr.P.(C)/60/2023 relates to Misc.(G) Case No. 184/2019 pertaining to guardianship filed by the husband.

(ii) Tr.P.(C)/61/2023 pertains to F.C.(Civil) No. 407/2022 which has arisen from a petition filed by the petitioner wife under Section 13 of the Hindu Marriage Act for divorce.

(iii) Tr.P.(C)/62/2023 pertains to F.C.(Civil) No. 1121/2019 pertaining to a



petition filed by the husband for restitution of conjugal rights.

4. The primary ground of filing these transfer petitions is on the apprehension of bias towards the petitioner by the learned Court below. To demonstrate such apprehension, Shri Sharma, learned counsel for the petitioner has drawn the attention of this Court to the averments made in paragraphs 8 / 9 of the petitions. In the said paragraph(s), it has been stated that some unnecessary comments were made when an application for adjournment was submitted by the petitioner on 15.07.2023. The comment has been submitted to have been made to her counsel that "she always in a habit of going outside. Ask your client to go to Brahmaputra to wash hands and come to court with clean hands etc".

5. It is further submitted that nevertheless, the prayer for adjournment made by the petitioner wife was granted and the matter was accordingly fixed on 18.07.2023. Shri Sharma, learned counsel for the petitioner however submits that since these petitions were filed on 18.07.2023 his client or her advocate did not appear before the learned Court on the said date, i.e, 18.07.2023.

6. Shri Sharma, the learned counsel has also raised the issue that very short dates are being fixed in these cases unlike other cases, which raises suspicion on the conduct of the learned Presiding Officer of the Court below. It has also been stated that the Presiding Officer would be retiring on 31.07.2023 and therefore undue haste has been shown in these cases. He accordingly submits that an order be passed transferring the three cases to any other Court having jurisdiction or in the alternative, to pass an order deferring the matters to a date after 31.07.2023 when the same can be taken up by the successor in the Office of the present Presiding Officer.

7. *Per contra*, Shri Bhuyan, learned counsel for the respondent has submitted that the facts projected by the petitioner are not at all correct. By dealing with the grounds which have been projected in support of the transfer petitions, Shri Bhuyan, the learned counsel submits that the grounds are absolutely frivolous and mere figments

of imagination. He categorically disputes that any unnecessary comments were made by the Presiding Officer during the proceedings. He submits that to the contrary, the petitioner has been negligent in conducting the cases as a result of which the cases have been prolonging for a long period of time.

8. The learned counsel for the respondent has also placed before this Court a copy of an order dated 19.09.2022 passed by this Court in CRP(IO)/108/2022 which had to be instituted by his client under peculiar circumstances when the wife was allowed to contest the case without vacating an *ex-parte* interim order. He submits that though the aforesaid CRP was withdrawn, certain observations were made by this Court which are relevant in the adjudication of the present cases.

9. This Court in the said order dated 19.09.2022 has made the following observations:

“Taking into account the said submission, the instant petition stands dismissed on withdrawal. It is however, observed that as the matter pertains to the year 2019 and there has been a delay in the said proceedings on account of the respondent, as could be seen, even from a perusal of the order dated 23/11/2021, this Court observes that the Trial Court i.e. the Court of the Principal Judge, Family Court No. 3, Kamrup(Metro) at Guwahati shall make an endeavor to dispose off the said proceedings as expeditiously as possible and preferably within 9(nine) months from the date of appearance of the parties.”

10. Shri Bhuyan, learned counsel for the respondent accordingly submits that in view of such observation that the proceedings are to be taken up expeditiously as possible and preferably within a period of 9(nine) months, the learned Family Court had fixed dates for the matters appropriately. He submits that even by fixing short dates, the deadline has not been able to be met and therefore the next date has been fixed on 24.07.2023 for judgment as admittedly on 18.07.2023, the petitioner wife had chosen not to appear before this Court and no steps were also taken informing the

learned Court regarding filing of the present matter or to seek adjournment. Shri Bhuyan, the learned counsel by referring to the order dated 15.07.2023 which has been placed before this Court, has submitted that the said order would reflect that the petitioner wife was seeking adjournment in spite of the fact that sufficient time was already granted to present the arguments. The learned Court below accordingly had fixed the next date as 18.07.2023 for argument in presence of the petitioner in spite of which she had chosen not to appear on the said date i.e. 18.07.2023 or even to take steps. The learned counsel for the respondent accordingly submits that there are no grounds for entertaining these petitions and therefore, the same are to be rejected.

11. In his rejoinder, Shri Sharma, learned counsel for the petitioner has however submitted that the aforesaid CRP(IO)/108/2022 was pertaining to only one case, namely, Tr.P.(C)/61/2023 for restitution of conjugal rights and therefore, the said order would not have a general applicability. He has further submitted that there was no order of this Court for having an analogous hearing.

12. The rival submissions made by learned counsel for the parties have been duly considered and the materials placed before this Court including the orders of the learned Presiding Officer, Family Court and the order dated 19.09.2022 of this Court have been carefully perused.

13. This Court has noticed that the principal contentions and grounds for seeking the transfer are on the allegation of bias as certain "unnecessary comments" were alleged to be made by the learned Presiding Officer. This Court had noticed that the said comments, however have been alleged to have been made in presence of the counsel for the petitioner whereas the averments have been verified in the affidavit accompanying the petitions by the petitioner as true to her knowledge and therefore, this Court would not be inclined to accept such bald allegations. Though an additional affidavit has been filed by the counsel subsequently, the same would not improve the situation.

14. The proceedings before the learned Family Court are continuing since the year 2019 and in the meantime, four years have passed and the matter is at the stage of final arguments. There is no explanation on record as to why the petitioner had chosen not to appear on the date fixed for argument on 18.07.2023 and therefore, this Court is not inclined to attribute any fault on the part of the Presiding Officer for passing the order dated 18.07.2023 fixing the date for judgment as 24.07.2023. This Court is also not inclined to accept the grounds projected to be sufficient grounds for seeking transfer of these cases. The allegation of bias is a matter of perception which has to be substantiated by materials on record and in the instant case, the same are found absolutely lacking. In any case, such allegation cannot be made at the fag end of the proceedings when the same are fixed for judgments. The allegations *prima facie* appear to have been made to avoid passing of the judgment which would also be against the observation made by this Court in the order dated 19.09.2022 in CRP (I/O) 108/2022.

15. This Court is also unable to accept the submission made on behalf of the petitioner that the observations made in the aforesaid order dated 19.09.2022 by this Court would have to be kept confined only to one case. All the three cases being intrinsically connected to each other, the observation for expeditious disposal cannot be said to be confined to one case. In any event, a party cannot raise any objections regarding fixation of short dates as such fixation is a step towards speedy dispensation of justice.

16. In view of the above, this Court is of the considered opinion that no case for transfer has been made out and accordingly, all the three petitions are dismissed.

17. However, in the interest of justice, this Court would make a request the learned Principal Judge, Family Court No. 1, Kamrup (M) to allow the petitioner wife to place her arguments on the next date fixed, i.e., 24.07.2023 before passing of the judgment which may be deferred by a day or two to the convenience of the learned Court. It is



however made clear that no prayer for adjournment by the petitioner would be entertained on the said date and if the petitioner fails or chooses not to advance her arguments, the learned Court would proceed in accordance with law.

JUDGE

Comparing Assistant