

Bappi Paul Vs. Ranjan Paul

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Court : Guwahati

Decided On : Aug-18-2000

Judge : A.K. Patnaik, J.

Acts : Code of Civil Procedure (CPC), 1908 Section 24

Appeal No. : Civil Revision No. 458 of 1999

Appellant : Bappi Paul

Respondent : Ranjan Paul

Advocate for Def. : Mr. Arindam Lodh, Adv.

Advocate for Pet/Ap. : Mr. B.C. Das, ;Mr. B. Kar Purkayastha and ;Mr. A. Das, Adv.

Disposition : Revision petition allowed

Judgement :

1. This is an application under section 24 of the Code of Civil Procedure, 1908, filed by the petitioner for transfer of Title Suit (Divorce) No. 62 of 1999 filed by the opposite party in the court of learned District Judge, West Tripura at Agartala in the State of Tripura to the court of learned District Judge, Cachar at Silchar in the State of Assam.

2. The grounds indicated in paragraphs 6 and 7 of the application for transfer of the aforesaid suit from the court of learned District Judge, West Tripura at Agartala to the Court of learned District Judge. Cachar at Silchar is that the petitioner-defendant is a lady without any financial resources and has no income of her own, and lives under the care of her parents. She is also not accustomed to moving alone by herself. Her father is about 60 years old and a sick person and there is no one except her minor younger brother to escort her to Agartala to attend the court. It has further been stated in paragraph-7 of the application that the distance between Silchar and Agartala by road is about 312 Kms and the road is unsafe due to activities of the extremists and the said road passes through hilly terrain, and it will therefore be difficult for the petitioner-defendant to undertake regular journey to Agartala to attend court. It has also been stated in the said paragraph-7 of the application that it will be difficult for the petitioner-defendant to meet the travelling expenses. That apart, the witnesses whom the petitioner-defendant intends to examine in the trial of the suit also reside at Silchar.

3. Mr. BC Das, learned counsel for the petitioner, relying on the said paragraphs 6 and 7 of the application submitted that this is a fit case in which the court should transfer the suit from the court of learned District Judge, West Tripura at Agartala to the court of learned District Judge, cachar at Silchar. Mr. Das pointed out that the opposite party also resides at Teliamura and not at Agartala and that in any case the opposite party has to travel all the distance .from Teliamura to Agartala to attend court. In case the suit is transferred from the court at Agartala to the court at Silchar, the opposite party will instead travel from Teliamura to Silchar and, therefore, no prejudice would be caused to the opposite party by such transfer of the suit. Mr. Das cited a decision of this court in the case of Krishna Roy Choudhury v. Ranjit Roy Choudhury, (1995) 3 GLR 370, in which the suit filed by the husband in the court of learned District Judge at Nagaon for restoration of conjugal rights was ordered to be transferred to the court of learned District Judge at Dibrugarh where his wife was residing.

4. Mr. Arindam Lodh, learned counsel appearing for the opposite party, on the other hand, cited a decision of this court in the case of Pranami Dutta Mazumdar v. Prasanta Kumar Choudhury, 1994(2) GLJ 171, in which the application field by

the wife praying for transfer of divorce suit from the court of learned District Judge at Dibrugarh to the court of learned District Judge at Kamrup, Guwahati, was rejected. Mr Lodh vehemently argued referring to the written objection filed by the opposite party that the ground for divorce pleaded in the divorce suit by the opposite party is cruelty on the part of the petitioner and the case of the opposite party-plaintiff is that the petitioner-defendant exhibited her cruelty maximum at Teliamura at the house of opposite party-plaintiff and the villagers and neighbours are all eye-witnesses to such incidents of cruelty by the petitioner-defendant. According to Mr Lodh, therefore, the witnesses whom the opposite party-plaintiff intends to examine in the suit belong to Teliamura and it will not be possible for the opposite party-plaintiff to bring those witnesses to Silchar if the suit is transferred to Silchar and the entire purpose of instituting the suit will be frustrated by such transfer of the suit to Silchar. Mr. lodh also referred to the averments in paragraph-15 of the written objection of the opposite party-plaintiff that the father of the petitioner-defendant is a dangerous person and that the opposite party-plaintiff, feels unsafe to go to Silchar and his life may be in danger if he is compelled to go to Silchar to attend the divorce proceeding. Mr. Lodh submitted that this is not a fit case in which this court should transfer the Divorce suit Instituted by the opposite party-plaintiff in the court of learned District Judge, West Tripura, Agartala to the court of learned District Judge, Cachar at Silchar.

5. In Krishna Roy Choudhury v. Ranjit Roy Choudhury and in Pranami Dutta Mazumdar v. Prasanta Kumar Choudhury, (supra), the following principle governing the general power of transfer of the High Court under section 24 of the Code of Civil Procedure, 1908 laid down by the Supreme Court in India Overseas Bank, Madras v. Chemical Construction Co. & Others, AIR 1979 SC 1514, has been quoted :-

'The principle governing the general power of transfer and withdrawal under section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The court should not lightly change that forum and compel him to go to another Court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another court, albeit a material

consideration, may not always to be a sure criterion justifying transfer.'

Thus, the plaintiff has a right to choose the forum which the law allows him for the purpose of instituting his suit and the court should not lightly change that forum and compel him to go to another court with consequent increase in inconvenience and expense of prosecuting his suit and there must be adequate grounds justifying such a transfer. In *Pranami Dutta Mazumdar v. 'Prasanta Kumar Choudhury (supra)*, this court has held that transfer should not be ordered for reasons of sentimentality, and the balance of convenience of all the parties and the witnesses, if any, must be considered and that the convenience of not only the defendant but both the parties should be taken into consideration.

6. It has not disputed by the opposite party-plaintiff that the petitioner-defendant has no income of her own. In fact, the opposite party-plaintiff has acknowledged the financial constraints of the petitioner-defendant by stating in paragraph-17 of his written objection filed in this court to the prayer for transfer of the suit that the opposite-party-defendant may bear the expenses of conveyance of the petitioner-defendant from Silchar to Agartala for the purpose of defending the suit. It has also not been disputed that the distance between Silchar and Agartala takes a lot of time to cover. In paragraph-18 of his written objection, the opposite party-plaintiff stated that it takes 8 hours by Deluxe Bus to come to Agartala from Silchar. The opposite party-plaintiff intends to examine the witnesses who belong not to Agartala but to Teliamura. The opposite party-plaintiff will therefore have to incur the expenses of bringing those witnesses from Teliamura to Agartala. For the aforesaid reasons, I am of the considered opinion that Agartala is a place which is neither convenient for the opposite party-plaintiff to prosecute the suit nor convenient for the petitioner-defendant to defend the suit.

7. Ye the opposite party-plaintiff has chosen to institute the suit at Agartala and not at Silchar because, as has been submitted by Mr Lodh, the witnesses that he intends to examine in the suit are at Teliamura in the State of Tripura and the opposite party-plaintiff is of the view that he will not be able to bring those witnesses to Silchar in the State of Assam and also because the opposite party-plaintiff does not feel safe to go to Silchar and is apprehensive that his life will be

in danger if he is compelled to go to Silchar to attend the divorce suit in case the suit is transferred to Silchar. For these reasons, I am also not inclined to transfer the suit to the court of learned District Judge, Cachar at Silchar as prayed by the petitioner-defendant.

8. Mr. Arindam Lodh, learned counsel for the opposite party-plaintiff, indicated that Dharmanagar in the State of Tripura is said to be located at a distance which can be covered in 3 (three) hours from Silchar. The opposite party-plaintiff would prefer to prosecute the suit at Dharmanagar rather than Silchar. The petitioner-defendant can travel conveniently with an escort from Silchar to Dharmanagar and return to Silchar after attending the court the same day. Since the petitioner-defendant has no income of her own, the opposite party-plaintiff will deposit in the court the travelling expenses of the petitioner-defendant and one escort for each day of court attendance by her.

9. For the reasons indicated above, the records of Title Suit (Divorce) No. 62 of 1999 are ordered to be transferred from the court of learned District Judge, West Tripura at Agartala to the court of learned Additional District Judge at Dharmanagar and the learned Additional District Judge at Dharmanagar will try the suit in accordance with law, and the opposite party-plaintiff will deposit the travel expenses of the petitioner-defendant and one escort from Silchar to Dharmanagar for each day of attendance in court by her at Dharmanagar.

10. The Revision Petition is allowed to the extent indicated above.