

GAHC010170062024



2026:GAU-AS:717

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

Tr.P.(C) No. 83/2024

Ashalata Mitra Baishya Alias Ashalata
Baishya,
W/o-Sri Bimal Mitra,
D/o-Sri Gopal Baishya,
R/o-Village-Kushlaiguri, P.O.- Patiladoha,
P.S.Manikpur,
Dist.-Bongaigaon, Asam,
Pin-783391.

.....Petitioner

-Versus-

Bimal Mitra,
S/o-Late Niranjana Mitra,
R/o- Village -Bhitorsurti,
P.S.-Tezpur, Dist.-Sonitpur,
Assam, Pin-784001,
Presently Serving At-Bro School And Centre, Dighi Camp,
Pune-411015.

.....Respondent

BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT AND ORDER (CAV)

Advocate for the petitioner : Mr. B.J. Mukherjee.

Advocate for the respondent : Mr. A. Ganguly.
Date on which judgment is reserved : 19.01.2026.
Date of pronouncement of judgment : 21.01.2026.

1. Heard Mr. B.J. Mukherjee, the learned counsel for the petitioner. Also heard Mr. A. Ganguly, 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, namely, Smt Ashalata Mitra Baishya Alias Ashalata Baishya for transfer of Title Suit (M) Case No. 124/2024, which is a divorce proceeding pending before the court of the learned District Judge, Tezpur to any competent court having jurisdiction at Bongaigaon.
3. The learned counsel for the petitioner has submitted that the petitioner was married to the respondent on 08.03.2012 at Bongaigaon as per Hindu rites and thereafter, they started living as husband and wife in the matrimonial home of the petitioner at Tezpur.
4. It is further submitted by the learned counsel for the petitioner that matrimonial discord erupted between the parties and the petitioner was forced to go back to her paternal home at Bongaigaon in the year 2012.

5. The learned counsel for the petitioner further submits that the petitioner had filed criminal cases against the respondent under Section 498A of IPC at Tezpur in which the respondent was acquitted by the trial court.
6. He further submits that thereafter the petitioner had filed cases under Section 12 of the Protection of Women from Domestic Violence Act, 2005 as well as case under Section 125 of CrPC claiming maintenance. He submits that in the proceeding under Section 125 CrPC, the respondent was directed to pay a maintenance allowance of Rs. 1500/- per month. However, the respondent has not paid any money against the said maintenance allowance.
7. It is further submitted that the outstanding due against the arrear maintenance allowance has become Rs.1, 59,000/- and in spite of receipt of the notice by the respondent, he has not paid the maintenance allowance to the petitioner.
8. The learned counsel for the petitioner submits that the respondent has filed the divorce proceeding in the court of the learned District Judge, Tezpur which has been registered as Title Suit (M) Case No. 124/2024 in spite of knowing that the petitioner was residing at Bongaigaon since the year 2012. He submits that petitioner being an unemployed woman and she is facing financial problem more so when the

maintenance allowance which was directed to be paid to the petitioner by the respondent has not yet been paid by the respondent. He submits that the petitioner is dependent on her aged parents and has no independent source of income. He further submits that under such financial constraint it would be difficult on the part of the petitioner to pursue the divorce case by engaging a counsel and going to Tezpur to do so. On the other hand, the respondent who had filed the divorce case in Tezpur himself does not reside at Tezpur. He is presently working at Pune and it is submitted that for the respondent it may not be difficult to attend the courts at Bongaigaon as for him it would be same to attend the court at Bongaigaon or Sonitpur.

9. The learned counsel for the petitioner has further submitted that while deciding an application for transfer of matrimonial dispute from one court to another the prime consideration is the economic soundness of both the parties and social strata of the spouses and their behavioural pattern.
10. He submits that the Apex Court in a catena of cases has observed that in the prevailing social economic paradigm in the Indian society generally it is a wife's convenience which must be looked at while considering an application for transfer. In support of his submissions, he has cited a ruling of the Apex Court in the case of **"N.C.V. Aishwarya Vs. A.S.**

Saravana Karthik Sha” reported in ***“(2022) 6 SCR 1085.”***

- 11.** On the other hand, Mr. A. Ganguly, the learned counsel for the respondent has vehemently opposed the prayer for transfer of the aforesaid case from the court of the learned District Judge, Sonitpur to any other court at Bongaigoan.
- 12.** He submits that this instant transfer application has been filed by the petitioner only with a *malafide* intention to harass the respondent. He further submits that prior to this the petitioner had filed criminal cases not only against the petitioner but also against his other family members wherein, he has been acquitted by the trial court.
- 13.** He further submits that the divorce case, transfer of which is sought by the petitioner, is filed in the court of District Judge, Sonitpur and not in the Family Court as Sonitpur does not have any Family Court. He submits that as such the embargo of Section 13 of the Family Court’s Act, 1984 is not applicable to the case and it is not mandatory for the petitioner to personally appear before the Family Court and she can very well pursue her case by engaging a counsel.
- 14.** He further submits that in the divorce suit which is sought to be transferred, the petitioner has already engaged a counsel and as the necessity of personal appearance is minimum on only those days where court directs to do so there would not

be much inconvenience on the part of the petitioner to attend and pursue her case in Sonitpur.

- 15.** He further submits that the petitioner is even ready to pay the conveyance expenses incurred by the petitioner in attending the court's at Sonitpur in the aforesaid divorce proceeding and as such he prays for dismissing the present transfer application.
- 16.** He further submits that the facts of the case cited by the learned counsel for the petitioner are distinguishable from the facts of the instant case in as much as in the case cited by the learned counsel for the petitioner the transfer was sought for from one Family Court to other Family Court and as already submitted by him the embargo of Section 13 would have been applicable in those cases which is not applicable in the instant case. Hence, he prays for dismissal of the instant transfer application.
- 17.** I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record, including the rulings cited by the learned counsel for both sides.
- 18.** In an application under Section 24 of the Code of Civil Procedure, 1908 for transfer of a matrimonial matter (like a divorce case) the factors to be taken into consideration is the economic soundness of both the parties and a comparative

inconvenience to which either of the party would be subjected to if such a prayer for transfer is not considered.

19. In the instant case, the marriage between the parties was performed at Bongaigaon where the present petitioner (wife) is presently residing along with her aged parents. It is also clear that the petitioner does not have any source of income and is dependent on the monthly maintenance allowance granted to her by the court in proceeding under Section 125 CrPC. However, it appears that said maintenance allowance is also not paid by the respondent to the petitioner and an arrear of Rs.1, 59,000/-has accumulated against the same. Hence, the comparative discomfort due to financial constraint on the part of the petitioner in attending the courts at Sonitpur is apparent.

20. This court is of the view that considering the comparative financial constraint which would be faced by the petitioner in pursuing the divorce proceeding before the court at Sonitpur, would be more than that of the respondent. Under such circumstances, the fact that the embargo of Section 13 of the Family Court Act, 1984 is not applicable to the present divorce proceeding, which is pending before the court of the learned District Judge, Sonitpur, becomes irrelevant.

21. The contention raised by the learned counsel for the

respondent that he has been acquitted in the criminal case under Section 498A of the Indian Penal Code, 1860 itself shows that the instant transfer petition has only been filed to harass the respondent does not appears to be convincing. Hence, same is rejected.

- 22.** For the aforesaid reasons, this court is of the considered opinion that this is a fit case where the prayer for transfer of Title Suit (M) Case No. 124/2024 to the court of the learned District Judge at Bongaigaon may be allowed.
- 23.** For the reasons mentioned hereinabove, this transfer petition it allowed and the Title Suit (M) Case No. 124/2024 is hereby transferred from the court of the learned District Judge, Sonitpur to the court of the learned District Judge at Bongaigaon.
- 24.** The learned District Judge, Sonitpur shall send the record of the aforesaid cases to the court at Bongaigaon so as to reach the said court by 24th February, 2026.
- 25.** Since both the parties are represented by their respected counsels, both the parties are directed to appear before the court of the learned District Judge at Bongaigaon in Title Suit (M) Case No. 124/2024 on 2nd March, 2026.
- 26.** The trial shall proceed from the stage where it is presently pending and will be taken into its logical conclusion by the

court of the learned District Judge at Bongaigaon.

JUDGE

Comparing Assistant