

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL.) NO. 324 OF 2013

MEGHALI SAIKIA

PETITIONER(S)

VERSUS

VINAY FUTANE

RESPONDENT(S)

O R D E R

This is a transfer petition filed by the petitioner-wife for transferring the divorce case filed by the respondent-husband bearing H.M.P. No.81 of 2012 titled as Vinay Futane vs. Meghali Saikia, under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

The application was filed on 12th March, 2012 but the petitioner-wife could not appear in the matter as she had neither financial means to go to Wardha, Maharashtra to contest the petition nor the assistance of any family member to accompany her to Wardha, Maharashtra to contest the application.

In the mean time, it is informed that the divorce proceeding has already concluded and the judgment is reserved on 26.2.2013. However, the petitioner-wife in the meantime filed transfer petition on 15.2.2013 and a notice was issued in the matter on 15.3.2013. In spite of this, the respondent did not appear in the Court to apprise the Court below regarding pendency of transfer petition before this Court as a result of which the trial court concluded the divorce proceedings ex-parte and reserved the judgment.

However, the counsel for the respondent-husband has submitted that the respondent had apprised the trial court regarding the pendency of the transfer petition before this Court.

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Be that as it may, the fact remains that the transfer proceeding during pendency of the transfer petition in which notice has been issued should not have been allowed to proceed ex-parte as this was bound to result into a judgment and order which would be clearly ex-parte in nature and without any contest.

However, the counsel for the respondent-husband also offered that the respondent-husband is prepared to bear the expenses of the petitioner-wife to contest the divorce proceeding at Wardha, Maharashtra, but the counsel is missing that as per his own averment the proceeding has already been concluded and the judgment has been reserved. Besides this, mere offer of financial expenses to the petitioner-wife to travel to Wardha, Maharashtra and contest the suit is hardly an option which can be held to be in the interest of justice to the contesting party i.e., the petitioner.

We are, therefore, of the view that H.M.P. No.81 of 2012 which is pending at Wardha, Maharashtra shall stand transferred to the Principal Judge, Family Court, Kamrup District, Guwahati, Assam.

The transfer petition, accordingly, stands allowed.

