

Shakuntala Modi

Vs

Om Prakash Bharuka

Transfer Petn. (Civil) No.530 of 1990

(L. M. Sharma, J. S. Verma JJ)

09.04.1991

JUDGEMENT

ORDER:-

1. The petitioner and the respondent were wife and husband, and got three children out of the wedlock. The marriage has been dissolved by a decree of divorce. The parties are now litigating for the custody of their children.
2. By the present application the petitioner has prayed for transfer of a case instituted by the respondent before Guardian Judge, Delhi, to the Court of Distt. Judge, Dibrugarh, where an earlier application filed by the petitioner is pending. It is stated on behalf of the petitioner that the two proceedings should be heard by the same Court and that for the reasons mentioned in the petition, the appropriate place is Dibrugarh and not Delhi.
3. The respondent has appeared in person and has contended that having regard to the circumstances mentioned in his counter-affidavit, the transfer of the case from Delhi will cause great hardship to him. The parties have made a large number of allegations in their affidavits touching the merits of their respective claims for custody of the children. We are not concerned with these statements at this stage as the matter has to be examined and decided on merits when the cases are heard in Court below.
4. The respondent has stated before us that he is not likely to get proper legal assistance at Dibrugarh where the petitioner's uncle who is a rich person stays. However, he has not suggested that on account of any financial difficulties he is not in a position to prosecute the litigation properly at Dibrugarh. On the other hand, he has offered to pay the expenses of the petitioner for travelling from Dibrugarh to Delhi by air, if the cases are heard at Delhi instead of Dibrugarh. His counter-affidavit also indicates that he has advocate friends at Gauhati from whom he has received legal advice from time to time.
5. Having regard to the nature of the dispute involved in the two cases, we are of the view that it is highly expedient that the cases are heard by the same Court. On an earlier occasion the respondent made an application for transfer of the Dibrugarh case to Delhi, which was rejected by this Court. The Dibrugarh case, therefore, has to be heard there. In the circumstances it is proper to transfer the Delhi case to Dibrugarh. Although it may cause the respondent some trouble of undertaking the journey to Dibrugarh but, for that reason in the facts of the present case it cannot be assumed that he will be prejudiced in prosecuting his case. If he is not in any financial difficulty, as it appears from the records and his own statement before this court, he can make an appropriate arrangement for his

representation at Dibrugarh and may not remain at Dibrugarh continuously for looking after the cases. It is expected that the trial Judge may fix a firm date for hearing of the cases to avoid adjournments so that the respondent may not have to pay repeated visits to Dibrugarh.

6. We accordingly direct that the case No. 61 of 1990 (Om Prakash Bharuka v. Ms. Shakuntala Modi) pending in the court of Shri Kuldip Singh, Guardian Judge, Delhi, be transferred to the Court of Distt. Judge, Dibrugarh. The transfer petition is allowed but, there shall be no order as to costs.

7. The respondent filed an Interlocutory Application in this Court for an interim order permitting him to have the company of his children during the last winter holidays which remained pending. No order need now be passed therein in view of the present judgment, but if the cases are not disposed of early, it will be open to him to make any suitable prayer before the Court below in this regard which will be disposed of according to law expeditiously.

8. The Office Report dated April 3, 1991, has pointed out certain defects in the counter-affidavit filed by the respondent in person. The respondent has sent a letter to the Registrar (Judl.) of this Court alleging that his counter-affidavit was drawn up and completed correctly and there were no defects at all and that it appears that somebody has later tampered with the records. The grievance is serious in nature. We, therefore, direct the Registrar General to hold a formal inquiry in the allegation giving the respondent an opportunity to place his case and may also examine other witnesses whose evidence may appear to be relevant and take other relevant materials in consideration. Let the inquiry be completed and a report be submitted expeditiously.

Order accordingly.

</html