
(2022) 09 OHC CK 0218
In the Orissa High Court
Case No : Transfer Petition (C) No.58 Of 2020

Soumyamayee Mallick

APPELLANT

Vs

Suvrajit Dash

RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 24
Hindu Marriage Act, 1955 — Section 9

Citation : (2022) 09 OHC CK 0218

Hon'ble Judges : Savitri Ratho, J

Bench : Single Bench

Advocate : P.K.Nayak

Final Decision : Disposed Of

Judgement

Savitri Ratho, J

1. This application has been filed by the petitioner under Section 24 of C.P.C. seeking transfer of Civil Proceeding No.26 of 2020 filed by her under Section-9 of the Hindu Marriage Act for restitution of conjugal rights in the Court of learned Judge, Nayagarh, to the Court of learned Judge, Family Court, Rourkela.

2. By order dated 26.02.2020, notice had been issued to opposite party in TRP (C) as well as in the I.A. and further proceeding in C.P. No.26 of 2020 had been directed to be stayed till the next date. Office note indicates that notice had been issued vide memo No.3148 dated 5.3.2020 to the sole opposite party by Registered Post, fixing 3.4.2020 for appearance and show cause. Thereafter, there is no noting regarding sufficiency of notice or return of un-served notice or A.D. or appearance/non-appearance of any counsel on behalf of the opposite party. The postal tracking report has not been downloaded and attached to the file. The concerned dealing assistant should have downloaded the report and prepared appropriate noting regarding service of notice.

3. Learned counsel for the petitioner has filed I.A.No.414 of 2022 stating that

though further proceedings had been stayed by this Court by order dated 26.2.2020, in view of the decision of the Hon'ble Apex Court in the case of Asian Resurfacing of Road Agency Pvt. Ltd. and another vs. Central Bureau of Investigation reported in AIR 2018 SC 2039, the learned Judge, Family Court, Nayagarh issued notice to the petitioner to appear in person on 6.7.2022, and as the distance between Nayagarh and Rourkela is about 500 K.Ms, the petitioner was unable to appear on the said date, for which the learned Judge, Family Court has fixed the case for ex parte hearing on 13.10.2022.

4. Learned counsel for the petitioner shall file requisites for issue of fresh notice by Registered Post with A.D. on the opposite party, by 10.10.2022. If requisites are filed as undertaken, notice shall be issued, making it returnable within four weeks.

5. List this case on 16.11.2022.

6. Interim order dated 26.02.2020 is extended till the next date.

7. Urgent certified copy of this order be granted as per rules.

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