

Court No. - 2

Case :- TRANSFER APPLICATION (CIVIL) No. - 444 of 2023

Applicant :- Konika Rai

Opposite Party :- Jai Prakash Rai

Counsel for Applicant :- Sanjay Kumar

Hon'ble Saral Srivastava,J.

Order on Order Sheet.

Perused the office reports dated 19.07.2023 & 05.12.2023 which states that undelivered cover has been returned with an endorsement that 'श्री जय प्रकाश राय को तलाश किया, मुलाकात नहीं हुई, जुबानी गवाहों से दरियास किया तो श्री जय प्रकाश राय का कुछ सही पता नहीं चला'. It is submitted by the learned counsel for the applicant that service of notice has been effected on the address given by the opposite party in his petition filed under Section 13 of Hindu Marriage Act at Varanasi.

Since, no other address of the opposite party is available on record, and steps for service of notice have been taken only on the address of opposite party mentioned in the application filed under Section 13 of Hindu Marriage Act at Varanasi, therefore, it appears that it is a case of deliberate avoidance of service of notice by opposite party. Accordingly, the service of notice upon opposite party is deemed sufficient.

Order on Transfer Application.

1. Learned counsel for the applicant is present. However, no one appears on behalf of the opposite party even in repeated calls nor has filed counter affidavit.

2. The present application has been filed by the applicant-wife seeking transfer of Case No.855 of 2022 (Jai Prakash Rai Vs. Konika Rai), under Section 13 of the Hindu Marriage Act pending in the court of Principal Judge, Family Court, District Varanasi to the court of Principal Judge, Family Court, District Ghazipur.

3. It is submitted by the learned counsel for the applicant that two proceedings; one under Section 12 of Domestic Violence Act and another under Sections 498A, 323, 504 and 506 I.P.C. and Section

3/4 of Domestic Violence Act have been instituted by the applicant against the opposite party at Ghazipur whereas opposite party has instituted the divorce petition at Varanasi. It is submitted that applicant is residing with her aged parents at Ghazipur and she is dependant upon her aged parents. It is submitted that distance between Ghazipur to Varanasi is about 90 kilometres and applicant has no source of income to meet the litigation expenses and other expenses which is to be incurred in travelling from Ghazipur to Varanasi to contest the case instituted by opposite party at Varanasi on each and every date fixed in the matter. It is submitted that father of the applicant is a heart patient and he is not in a position to accompany the applicant to travel Varanasi to contest the case on each and every date. It is further submitted that financial condition of applicant is not good to do pairvi in the case. It is further submitted that no amount towards maintenance is being paid to the applicant by the opposite party. It is also submitted that balance of convenience also lay in favour of the applicant, and if the case is allowed to be proceeded at Varanasi, applicant would suffer serious prejudice.

4. The opposite party has neither put in appearance nor filed any counter affidavit, therefore, the averments contained in the affidavit filed in support of the transfer application are unrebutted and they are being treated to be correct.

5. It is settled in law that convenience of wife is to be looked into in case of dispute between the husband and wife. Therefore, considering the hardship which is being faced by the applicant-wife, it is a fit case where this Court should exercise its power to transfer the case from District Varanasi to District Ghazipur.

6. Accordingly, the Case No.855 of 2022 (Jai Prakash Rai Vs. Konika Rai), under Section 13 of the Hindu Marriage Act pending in the court of Principal Judge, Family Court, District Varanasi is transferred to the court of Principal Judge, Family Court, Ghazipur.

7. The Principal Judge, Family Court, Varanasi is directed to remit the record of Case No.855 of 2022 (Jai Prakash Rai Vs. Konika Rai), under Section 13 of the Hindu Marriage Act to the court of Principal Judge, Family Court, Ghazipur for its disposal.

8. The Transfer Application is **allowed** with no order as to costs.

Order Date :- 6.12.2023
Sattyarth