

Court No. - 2

Case :- TRANSFER APPLICATION (CIVIL) No. - 471 of 2023

Applicant :- Smt. Divya Sharma

Opposite Party :- Prashant Kumar Sharma

Counsel for Applicant :- Lovekush Kumar Mishra, Prabhakar Tripathi

Counsel for Opposite Party :- Manoj Kumar Srivastava

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the applicant and learned counsel for the opposite party.

2. The present application has been filed by the applicant-wife seeking transfer of Case No.376 of 2021 (Prashant Kumar Sharma Vs. Smt. Divya Sharma), under Section 11 of Hindu Marriage Act pending in the court of Principal Judge, Family Court, Aligarh to court of Principal Judge, Family Court, Agra.

3. The transfer of the aforesaid case has been sought on the ground that applicant is dependant upon her old parents who are suffering from many old age ailments, and in such view of the fact, it is very hard for the applicant to travel from Agra to Aligarh to contest the case instituted by the opposite party at Aligarh on each and every date. Consequently, it is submitted that Case No.376 of 2021 (Prashant Kumar Sharma Vs. Smt. Divya Sharma), under Section 11 of Hindu Marriage Act may be transferred from the court of Principal Judge, Family Court, Aligarh to court of Principal Judge, Family Court, Agra in the interest of justice.

4. Per contra, learned counsel for the opposite party would contend that opposite party has been defrauded by the applicant inasmuch as applicant was already married with one Ankit Agarwal in the year 2015, and she has instituted a case under Section 9 of Hindu Marriage Act against Ankit Agarwal, registered as Marriage Petition No.513 of 2021 in the court of Principal Judge, Family Court, Aligarh. It is submitted that opposite party has filed a certificate issued by the Arya Samaj certifying the solemnisation of marriage between applicant and Ankit Agarwal, and applicant is not disputing the genuineness of the said certificate issued by the Arya Samaj, which is enclosed as annexure CA-1 to the counter affidavit. It is further submitted that since applicant without getting

her first marriage dissolved in accordance with law, solemnised marriage with the opposite party fraudulently without disclosing the said fact, therefore, it is not a case where indulgence should be granted by this Court in favour of the applicant to transfer the aforesaid case.

5. It is further submitted that applicant is Ph.D and being an educated lady, she understand the pros and cons in entering into a wedlock with her first husband, and again entering into wedlock with opposite party without disclosing the fact of her first marriage to the opposite party. Consequently, it is submitted that transfer application deserves to be dismissed.

6. Be that as it may, though the law is well settled that the Court in considering the application for transfer on behalf of wife in matrimonial dispute should consider the hardship of the wife in deciding the transfer application, but it does not mean that Court should permit the wife to use the transfer petition as a tool to harass the husband. The Court is of the view that while considering the transfer application, conduct of parties should also be seen, and if the Court finds that conduct of the applicant is inappropriate and ill-suited, the indulgence which otherwise a wife is entitled should not be granted.

7. It is one such case where for the aforesaid reasons this Court is not inclined to grant indulgence to the applicant inasmuch as the applicant has already solemnised marriage with one Ankit Agarwal and a certificate to this effect issued by the Arya Samaj has been filed alongwith the counter affidavit, and genuineness of the said certificate issued by the Arya Samaj recognising the marriage of applicant with Ankit Agarwal is not disputed. It appears that this fact was not disclosed by the applicant while solemnising marriage with opposite party, and therefore, the conduct of the applicant is not ethical so that this Court should grant indulgence to the applicant and transfer the case from the court of Principal Judge, Family Court, Aligarh to court of Principal Judge, Family Court, Agra.

8. Thus, for the reasons given above, no ground is made out for transfer of the case. Consequently, transfer application is ***dismissed*** with no order as to costs.

Order Date :- 29.11.2023

Sattiyarth