

Court No. - 2

Case :- TRANSFER APPLICATION (CIVIL) No. - 629 of 2023

Applicant :- Smt. Aafreen Khan

Opposite Party :- Arif Hasan

Counsel for Applicant :- Bhuvnesh Kumar Singh

Hon'ble Saral Srivastava,J.

Order on Order Sheet.

Perused the office report dated 28.11.2023 which states that undelivered cover has been returned with an endorsement that 'खोजने पर प्राप्तकर्ता का नहीं चल रहा पता, इसलिए प्रेषक को वापस'. 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 Restitution of conjugal right.

It appears that it is a case of deliberate avoidance of service of notice. Accordingly, the service of notice upon opposite party is deemed sufficient.

Order on Transfer Application.

1. Heard learned counsel for the applicant.
2. No one appears on behalf of the opposite party even in revised calls nor any counter affidavit has been filed.
3. The present application has been filed by the applicant-wife seeking transfer of Case No.568 of 2022 (Arif Vs. Afreen Khan) pending in the court of Principal Judge, Family Court, Auraiya to court of Principal Judge, Family Court, Agra.
4. It is submitted by the learned counsel for the applicant that two proceedings; one under Section 125 of Cr.P.C. and another in Case Crime No.141 of 2013, under Sections 498A and 323 I.P.C. and Section 3/4 of Dowry Prohibition Act have been instituted by the applicant against the opposite party at Agra whereas opposite party has instituted the divorce petition at Auraiya. It is further submitted that applicant alongwith her minor child is residing with her mother at Agra and distance between Agra to Auraiya is more than about 200 kilometres and applicant has no source of income to meet the litigation expenses and other expenses which is to be incurred in travelling from Agra to Auraiya to contest the case instituted by opposite party at Auraiya alongwith her minor child

on each and every date fixed in the matter. It is further submitted that no amount of 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 Ghaziabad, applicant would suffer serious prejudice. Necessary averments in this respect have been made in paragraphs 18 and 19 of the affidavit filed in support of the transfer application which is being reproduced hereinbelow:-

"18. That the applicant is fully unemployed and there is no source of income of the applicant. The applicant and her minor child are fully dependent on the widow mother of applicant and at present time, the applicant is residing alongwith her widow mother at her mother's house, therefore, she is unable to attend the proceedings of present case at District Judgeship, Auraiya.

19. That the distance between the District Judgeship, Auraiya and the hosue of the applicant is approximate 200 Km and there is no source of income of the applicant and also she is unable to attend the proceedings of present case along with her minor child at District Judgeship, Auraiya."

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

6. 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 by the applicant-wife, it is a fit case where this Court should exercise its power to transfer the case from District Auraiya to District Agra.

7. Accordingly, the Case No.568 of 2022 (Arif Vs. Afreen Khan) pending in the court of Principal Judge, Family Court, Auraiya is transferred to the court of Principal Judge, Family Court, Agra.

8. The Additional Principal Judge, Family Court, Auraiya is directed to remit the record of Case No.568 of 2022 (Arif Vs. Afreen Khan) to the court of Principal Judge, Family Court, Agra for its disposal.

9. Accordingly, the Transfer Application is allowed with no order as to costs.

Order Date :- 29.11.2023 / A.N. Mishra