

Court No. - 2

Case :- TRANSFER APPLICATION (CIVIL) No. - 818 of 2023

Applicant :- Meenu

Opposite Party :- Rakesh

Counsel for Applicant :- Arvind Agrawal

Hon'ble Saral Srivastava,J.

1. Heard Sri Arvind Agrawal, learned counsel for the applicant.
2. The present transfer application has been filed by the applicant seeking transfer of Matrimonial Case No.1526 of 2019 (Rakesh Vs. Smt. Meenu), under Section 13 of Hindu Marriage Act, pending in the court of Principal Judge, Family Court, Agra to Principal Judge, Family Court, Firozabad.
3. The transfer of the case has been sought on the ground that in a case instituted by the applicant under the Domestic Violence Act, the Civil Judge (S.D.)/F.T.C./A.C.J.M, Firozabad has passed an order of payment of compensation of Rs.1 lac in lump-sum and Rs.5,000/- as maintenance. It is stated that the respondent is not paying the said amount to the applicant. Besides this, an order has been passed by the Principal Judge, Family Court, Agra in the present suit under Section 24 of the Hindu Marriage Act granting maintenance and as on today, Rs.1,80,000/- is due against the respondent which has not been paid, and since no amount of maintenance is being paid to the applicant, that is causing hardship to the applicant.
4. Be that as it may, the suit under Section 13 of Hindu Marriage Act has been instituted in the year 2019. Since the suit under Section 13 of Hindu Marriage Act was not disposed off, opposite party approached this Court by filing Matter Under Article 227 No.1002 of 2022 in which this Court directed the Principal Judge, Family Court, Agra to decide the Case No.1526 of 2019 expeditiously, preferably within a period of nine months by order dated 09.03.2022.
5. No order sheet of the aforesaid case has been filed alongwith the record nor there is any averment in the application disclosing the reason for non-disposal of the aforesaid case within the time framed fixed by this Court in Matter Under Article 227 No.1002 of

2022.

6. The applicant, thereafter, moved an application before the Principal Judge, Family Court, Agra for transferring the case from the Family Court No.1 to some other court which was rejected by the Principal Judge, Family Court, Agra on 31.08.2023.

7. The order of Principal Judge, Family Court, Agra dated 31.08.2023 reads as under:-

"आज स्थानान्तरण आवेदन सुनवाई हेतु पेश हुआ। प्रार्थी याची को प्रार्थना पत्र स्थानान्तरण पर सुना गया। प्रार्थी याची ने प्रस्तुत स्थानान्तरण प्रार्थना पत्र इस बायत प्रस्तुत किया गया है कि मूल वाद के सम्बन्ध में याची ने एक प्रार्थना पत्र अन्तर्गत धारा 24 हिन्दू विवाह अधिनियम दाखिल किया था जो कि निस्तारित हुआ और उसमें आज दिनांक तक 180000/- रुपये की राशि बकाया है जिसके क्रियान्वयन हेतु याची ने एक प्रकीर्ण वाद दाखिल किया हुआ है और दोनों वादों में एक ही दिनांक नियत रहती है। याची द्वारा तीन गवाहों से जिरह भी समाप्त की जा चुकी है। इन तीनों गवाहियों के दौरान विपक्षी द्वारा न्यायालय से आग्रह कर आश्वासन किये गये कि वह बकाया राशि चुका देगा लेकिन आज तक अदा नहीं कर रहा है। जिस पर माननीय न्यायालय द्वारा कोई भी ध्यान नहीं दिया जा रहा है। नियत दिनांक 26.07.2023 को जब याची प्रार्थी द्वारा माननीय न्यायालय से मौखिक रूप से आग्रह किया गया कि याची के अधिवक्ता दिनांक 28.07.2023 को न्यायालय में उपस्थित अपने निजी कारण के वजह से नहीं हो सके उसके बावजूद भी न्यायालय द्वारा दिनांक 28.07.2023 नियत कर दी गयी और इन सभी कारणों की वजह से यात्री को परिवार न्यायालय प्रथम से न्याय की उम्मीद नहीं है। अतः वाद सं० 1526/2019, राकेश बनाम मीनू अन्तर्गत धारा 13 हिन्दू विवाह अधिनियम परिवार न्यायालय संख्या-1 से आप न्यायालय के समक्ष स्थानान्तरण करने के आदेश पारित किये जाये। इस सम्बन्ध में सम्बन्धित पीठासीन अधिकारी आख्या प्रस्तुत की गयी।

स्थानान्तरण प्रार्थना पत्र में धनराशि के बकाया के सम्बन्ध में प्रार्थी द्वारा कथन किये गये हैं। धनराशि का सम्बन्ध वाद के निस्तारण से नहीं है जब कि पीठासीन अधिकारी की आख्या से विदित है कि माननीय उच्च न्यायालय द्वारा 9 माह के अन्तर्गत सम्बन्धित मामले को निस्तारित किये जाने का निर्देश जारी किया गया है। स्थानान्तरण प्रार्थना पत्र में आधार पर्याप्त नहीं है। अतः प्रार्थी का स्थानान्तरण प्रार्थना पत्र निरस्त किया जाता है। आदेश की एक प्रति सम्बन्धित न्यायालय में भेजी जाये।"

8. After having been unsuccessful in getting the case transferred from the Family Court No.1 to some other court, now applicant has approached this Court by means of filing the present transfer application seeking transfer of Case No.1526 of 2019.

9. The record reveals that case is pending since 2019 and applicant is participating in the proceedings. The applicant has not stated even a single word about the reason for non-disposal of the case within the time framed fixed by this Court to decide the Case No.1526 of 2019 within nine months. Further, the applicant has already approached the Principal Judge, Family Court Agra for transfer of the case from Family Court No.1 to some other court.

10. The applicant has not assailed that order and now she has approached this Court for transferring of the case.

11. In the opinion of the Court, the applicant cannot be permitted to misuse the process of law as the transfer application cannot be used a ploy to harass the other side. If maintenance granted to the applicant has not been paid by the opposite party, the applicant has remedy of getting that order executed.

12. In such view of the fact, this Court is of the opinion that the ground on which the transfer of the case is sought is misconceived.

13. Consequently, transfer application is ***dismissed*** with no order as to costs.

Order Date :- 12.10.2023

Sattyarth