

Court No. - 17

Case :- TRANSFER APPLICATION (CIVIL) No. - 90 of 2021

Applicant :- Vandana

Opposite Party :- Mukesh Sharma

Counsel for Applicant :- Utkarsh Kumar, Ajeet Kumar Mishra

Counsel for Opposite Party :- Pradyumn Shukla, Qasim Abbas Zaidi

Hon'ble Alok Mathur, J.

1. Heard Sri Ajeet Kumar Mishra, learned counsel for the applicant.

2. There is request for adjournment on behalf of the respondent. It is noticed that this Court by means of its previous order dated 13.1.2023 had adjourned the matter on the request of counsel for the respondent. After noticing that repeated request for adjournment was sought by him it was provided that in case counsel for the respondent has any difficulty, he shall make alternate arrangement and the matter would not be adjourned at his behest. It is in aforesaid circumstances that this Court is proceeding to decide this case finally.

3. It has been submitted by learned counsel for the applicant that the applicant and the respondent were married on 28.5.2013 according to Hindu rites and rituals. On 26.8.2015 a baby girl was born to them. It is further stated that 2016 onwards the applicant was harassed by the family members of the respondent for demand of dowry and she had to leave her matrimonial home and started living with her parents at Gonda. It is further stated that the applicant has availed remedy under Section 125 Cr.P.C. before Principal Judge, Family Court, Gonda where the respondent put in appearance and contested the said case. It is in aforesaid circumstances that it is stated that the respondent has filed suit under Section 13 of Hindu Marriage Act before Principal Judge, Family Court, Barabanki on 21.12.2019 and on receipt of notice the applicant after getting the vakalatnama filed had moved an application for transferring the said case pending before Principal Judge, Family Court, Barabanki to the court of competent jurisdiction at Gonda. The applicant submits that she does not have any independent source of income and is dependent on her parents for financial support and is unable to prosecute the case at Barabanki along with her minor daughter on each of date of hearing.

4. The respondent has filed counter affidavit opposing the claim of the applicant. While opposing the said claim it has been stated that the respondent is ready to pay travel expenses to the applicant for participating in the proceedings under Section 13 of Hindu Marriage Act at Barabanki but it has been stated that despite the orders passed under Section 125 Cr.P.C. for maintenance the same has not been paid by the respondent till date and consequently this cannot be a ground for opposing the application under Section 24 of CPC.

5. I have heard the rival contentions.

6. According to the applicant she is living with her parents at Gonda and does not have independent source of income and is fully dependent upon them and she has also a minor daughter to look after. Due the fact that the distance from Gonda to Barabanki is about 90 kilometers she is unable to travel such a long distance on each date of hearing to prosecute the said case and consequently the present application for transfer has been filed.

7. Hon'ble Supreme Court in the case of **N.C.V. AISHWARYA versus A.S. SARAVANA KARTHIK SHA, 2022 Live law (SC) 627** has held as under :-

9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions."

8. Having heard learned counsel for the parties and perusing the record, it is noticed that already the case instituted by the

applicant under Section 125 Cr.P.C. at Gonda has been allowed and a case under Section 12 of Domestic Violence Act is pending before Judicial Magistrate, 2nd, Gonda; that the applicant, who is wholly dependent upon her parents for financial support, has a minor child to look after also looking to the fact that the applicant has to travel from Gonda to Barabanki as well as in view of the law down by Supreme Court as aforesaid, a case for transfer under Section 24 of Civil Procedure Code is made out. The application is, therefore, **allowed.**

9. The proceedings under Section 13 of Hindu Marriage Act bearing No.1314 of 2019 (Mukesh Kumar Vs. Smt. Vandana) pending at Principal Judge, Family Court, Barabanki shall stand transferred to the court of competent jurisdiction at Gonda.

(Alok Mathur, J.)

Order Date :- 27.10.2023
RKM.