

Court No. - 17

Case :- TRANSFER APPLICATION (CIVIL) No. - 217 of 2023

Applicant :- Smt. Sarita Verma

Opposite Party :- Rakesh Soni

Counsel for Applicant :- Chhote Lal Yadav

Hon'ble Alok Mathur,J.

1. Heard Sri Chhote Lal Yadav, learned counsel for applicant as well as Sri Krishna Kumar, learned counsel for respondent.
2. Present transfer application has been filed under Section 24 of Code of Civil Procedure for transfer of Original Suit No. 410/2022 (Rakesh Soni Vs. Smt. Sarita Verma) filed under Section 13 of Hindu Marriage Act, 1955 which is pending in the court of 3rd Additional Principle Judge, Family Court, Sultanpur to the court of competent jurisdiction at Varanasi.
3. It has been submitted that the applicant and the respondent were married on 27.02.2009 as per Hindu rites and rituals and out of the said wedlock they have one daughter and one son. It has been stated that the applicant was subjected to physical and mental abuse by the respondent and his family members due to which she was forced to leave her matrimonial house sometimes in 2016 and the children continue to live with the respondent at Sultanpur which led to filing a Case No. 126/2008 under Section 12 of the Domestic Violence Act by the applicant against respondent and his family members which is pending before the court of Judicial Magistrate, Varanasi.
4. It has been submitted by learned counsel for applicant that applicant has filed a Case being Case No. 820/2022 under Section 125 of Cr.P.c. for grant of maintenance before the Family Court, Varanasi. In the said case, notices has been issued to the respondent who has put in appearance and contesting the matter at Varanasi. The respondent has also filed a suit under Section 9 of the Hindu Marriage Act before 3rd Additional Principle Judge, Family Court, Sultanpur, numbered as original Suit No. 618/2018 which has been decided ex-parte on 19.08.2021. The applicant has moved an application for review which is pending consideration. It is stated that it is in the aforesaid circumstances that the respondent has filed the case under Section 13 of Hindu Marriage Act at Sultanpur and the applicant has been issued notices. It has been submitted that

the applicant doesn't have any independent source of income and is totally dependent upon her parents for her subsistence. She has also submitted that respondent has regularly threatened her due to which she apprehends danger of her life. It is stated that on 25.07.2023 when applicant had appeared in the Court at Sultanpur certain persons have abused her and threatened due to which she reasonably apprehensions a threat for a person safely and security when she is unable to travel from Varanasi to Sultanpur to prosecute the said case on each date of hearing and consequently present application under Section 24 CPC has been filed for transfer of Original Suit No. 410/2022 (Rakesh Soni Vs. Smt. Sarita Verma) filed under Section 13 of Hindu Marriage Act, 1955 which is pending in the court of 3rd Additional Principle Judge, Family Court, Sultanpur to the court of competent jurisdiction at Varanasi .

5. The said application has been opposed by counsel for respondent. He has denied all the allegations made in the said application and also specifically denied that they had never threatened the applicant when she had appeared before the competent court at Sultanpur. He had further submitted that one of the relative of the applicant is practicing Advocate in the District Court at Varanasi and also that the applicant has not disclosed about habeas corpus which was dismissed by the coordinate bench at Allahabad with regard to custody of the children who are with the respondent.

6. Learned counsel for the applicant has also relied upon the case of **N.C.V. AISHWARYA versus A.S. SARAVANA KARTHIK SHA, 2022 Live law (SC) 627 specially on paragraph Nos. 9 and 10**, which read 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."

6. I have heard learned counsel for parties and perused the record.

7. From the aforesaid facts, it is evident that there is a bitter matrimonial dispute between the applicant and the respondent. It is submitted that on the basis of mental and physical abuse of the applicant by the respondent she left her matrimonial home in 2015 while her son and daughter are living with the respondent. The applicant is living in Varanasi with her parents while on the other hand the respondent is living in Sultanpur.

8. The applicant has instituted an application under Section 125 Cr.P.C. which is being prosecuted by the respondent in the Court at Varanasi and also that a case under Section 12 of Domestic Violence Act is also pending in the Court at Varanasi which is being prosecuted by the respondents. It is further evident that the applicant does not have any independent financial source of income and she is totally dependent on her parents for subsistence and also that she being lady it is difficult for her to travel on each date from Varanasi to Sultanpur as well as in view of the law laid down by Hon'ble the Supreme Court as aforesaid, a case for transfer under Section 24 of Civil Procedure Code is made out.

10. Accordingly, the application is **allowed**.

11. Original Suit No. 410/2022 (Rakesh Soni Vs. Smt. Sarita Verma) filed under Section 13 of Hindu Marriage Act, 1955 pending in the court of 3rd Additional Principle Judge, Family Court, Sultanpur is directed to be transferred to immediately to the court of competent jurisdiction at Varanasi.

(Alok Mathur, J.)

Order Date :- 6.12.2023

Ravi/