

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Trp (C) No. 2 /2024
CM No. (1733/24)
Reserved On : 21.12.2024
Pronounced On: 31.12.2024

Mehboob Ali

.....Petitioner(s)

Through: Mr. Sheikh Feroz, Advocate

Versus

Nisar Fatima & Ors.

.....Respondent(s)

Through: None

CORAM: HON'BLE MR JUSTICE M.A.CHOWDHARY, JUDGE

1. Petitioner through the medium of this Civil Transfer Petition invoked under Section 25 CPC 1908 seeks withdrawal of suit for Restitution of Conjugal Rights titled **Mehboob Ali Vs. Nisar Fatima and Ors.** from the Court of 4th Additional District & Session Judge (Designated as Addl; Judge, Family Court) at Srinagar and transfer the same to any other competent court of jurisdiction on the following grounds;

i/ that the petitioner encountered difficulties at various points during the proceedings due to the bias approach of court below and as such relocate the case to a different court as petitioner has reasonable fear that he may not receive a fair trial in the Court below due to bias and charged atmosphere;

ii/ that the Court below has commenced the proceedings on 24.08.2023 and almost 14 interim orders have been passed by the trial Court and there is also interference by the Court official namely Riyaz Ahmed S.O. who is related to the respondents and has played a

vital role in creating matrimonial discord interse petitioner and respondent No. 1 and has hatched conspiracy against the petitioner by taking into confidence the Presiding Officer as well.

iii/ that the petitioner had preferred an application before Court of Principal Judge, Family Court at Srinagar seeking transfer of the suit, however, the application was dismissed without hearing the petitioner by virtue of order dated 10.02.2024.

iv/ It has been further alleged that the Presiding Officer used to pressurize the petitioner to pay hefty amount to respondent No. 1 and many occasions petitioner was forced to pay Rs. 5,000/-, 10,000/- to respondent no. 1 in the open court among which only an amount of Rs. 10,000/- was recorded in proceeding sheet which speaks bias approach on his part more so, on last date of hearing he has threatened the petitioner of imposing fine to the tune of Rs. 50,000/- and it was apprehended that the petitioner may not get a fair trial of the justice in the said Court.

2. Pursuant to notice the respondents chose not to respond or file any reply/objections to the petition. The trial Court in its para-wise comments has disputed the allegations stating therein that the official Riyaz Ahmed has been working as reader in the Trial Court but other allegations have baseless and without any foundation. It has been also submitted that the Court had never pressurized the applicant for making any payment but has taken efforts to settle the matter amicably as per the Family Court's Act. It has been submitted by the trial Court that the suit filed by the petitioner came to be dismissed vide a detailed order dated 29.02.2024 and the petitioner has moved an application for restoration of the same on 22.04.2024 which is subjudice before the Court. It has been lastly stated that trial Court shall have no objection that in case the restoration

application pending before the trial Court is withdrawn and transferred to any other Court.

3. It is very strange that the petitioner filed the suit for Restitution of Conjugal rights not only against his wife respondent No. 1 Nisar Fatima but eight other persons including parents-in-law, since the suit had already been dismissed vide order dated 29.02.2024 during the pendency of this transfer petition which had been filed on 17.02.2024. The relief is moulded with respect to transfer of the application for restoration instead of suit. The petition, in view of the fact that an official who was working as reader in the trial Court and is related to the respondents has been interfering in the matter particularly when respondents did not choose to file response to this petition, the grievance of the petitioner cannot be brushed aside.
4. This court is of considered opinion that it is in the interest of justice that the application for restoration of the suit titled **Mehboob Ali Vs. Nisar Fatima & Ors.** pending before the trial Court is withdrawn and is assigned to any other Court of Competent jurisdiction.
5. Viewed thus, the transfer application is allowed and the application for restoration of suit for Restitution of Conjugal rights filed by the petitioner is ordered to be withdrawn from the Additional Family Court (4th Addl; District Judge) Srinagar and is ordered to be transferred to the Court of Principal Family Court, Srinagar.
6. Copy of this order shall be communicated to both the Courts.

SRINAGAR
31.12.2024

(M.A.CHOWDHARY)
JUDGE

Mujtaba