

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (C) No.17 of 2015**

Dipika Bafna (Jain), W/o. Dipesh Bafna, A/A 26 years, R/o. JK Jewellery,
Sadar Bazar, Bhatapara, District Baloda Bazar (CG)

---- Petitioner

Versus

Dipesh Kumar Bafna (Jain), S/o. Anil Kumar Bafna, A/A 29 years,
Presently residing at 2/9, Rishabh Nagar, Durg, District Durg (CG)
Permanent R/o. Village Arjunda, Tahsil Gunderdehi, District Balod
(CG)

---- Respondent

Shri Anumeh Shrivastava counsel for the petitioner.
Shri Goutam Khetrapal and Shri Avinash Chand Sahu, counsel
for the respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

17.11.2015.

By this order, transfer petition (civil) filed by the petitioner seeking transfer of Civil Suit No.34A/14 (Dipesh Bafna Vs. Smt. Dipika Bafna) under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage by a decree of divorce pending before First Additional Principal Judge, Family Court, Durg to the Court of Additional District Judge Bhattapara, District Baloda Bazar, is being disposed of.

2. As per brief facts of the petition, the petitioner and respondent are legally wedded wife and husband, their marriage was solemnized on 29.6.2009 as per Hindu rituals and customs and out of their wedlock a girl child was born on 16.9.2011, presently aged about 4 years, living with the petitioner. The petitioner has no independent source of income, she is depend upon her father and living with him at Bhattapara. Distance between Bhattapara and Durg is about 110 km and no direct bus services are available. As the father of the petitioner is engaged in business, he could not escort the petitioner to attend the

court proceedings. As per the distribution memo, the Additional District Judge, Bhattapara is given jurisdiction to entertain the matter under Hindu Marriage Act, it would be convenient if the aforementioned matter is transferred from Durg to Bhattapara.

3. On behalf of the respondent, reply to main petition has been filed. In the reply it is mentioned that all the matrimonial matters of Baloda Bazar District are heard by District Judge Baloda Bazar who has only jurisdiction to entertain the matter under Section 7 of the Family Court. Baloda Bazar is about 30-45 km from Bhattapara and there is no direct train services to Baloda Bazar and only road transport is available. The petitioner is being represented before Durg Court through amicus curie available under provisions of Section 13 of the Family Court Act 1984, the matter is fixed for the evidence though no any party has adduced the evidence in this matter. The respondent has filed his examination -in-chief in the form of Order 18 Rule 4 of the CPC. The matter is pending as the petitioner is not interested for the trial and the Additional District Judge, Bhattapara is not having jurisdiction to decide the matter in relation with Section 13 of the Hindu Marriage Act, hence, it is prayed that application for transfer of the above mentioned civil suit may be rejected.

4. Heard both the parties in the matter.

5. Learned counsel for the petitioner supported the grounds taken in the petition and submitted that as per the distribution memo from the Office of District and Sessions Judge, Baloda Bazar vide order No. *ka1/15-04/2013*, dated 29.12.2014, the Court of Additional District and Sessions Judge, Bhattapara is given jurisdiction to dispose of the matter pertaining to Hindu Marriage Act, he has submitted a photo copy

of the distribution order and pleaded that as per the distribution memo Additional District and Sessions Judge, Bhattapara is authorised to hear the matter under the Hindu Marriage Act. Learned counsel would further submits that as the petitioner has no independent source of income, she depend upon her father for taking care of her four year old child as also it would be inconvenient for her to attend the Court, hence, the matter be transferred from Durg to Bhattapara. Learned counsel would further submits that one matter under Section 125 of the Cr.P.C. and one matrimonial matter under Section 9 Hindu Marriage Act for restitution of conjugal rights are also pending before Bhattapara Court though he has not filed any documents, but the matters are pending hence, in addition to other grounds it would be appropriate that the matter belongs to Section 9 and Section 13 of the Hindu Marriage Act be heard by the same Court.

6. Learned counsel for the respondent has opposed the arguments advanced on behalf of the petition and duly supported the ground taken in the reply and further submitted that the matter is fixed for the evidence of the both the parties, the evidence are yet to be recorded though the respondent has filed the examination in chief in the form of affidavit required under Order 18 Rule 4 of the Code. The petitioner was granted Rs.2000/- as interim maintenance under Section 24 of Hindu Marriage Act and so far as conveyance from Bhattapara to Durg many direct train serves are available. The respondent is in the real estate business. Looking to the stage and other facts, prayer of the petitioner may be dismissed.

7. For appreciating the arguments advanced on behalf of the parties, I have perused the petition, reply filed by the respondent and other documents annexed along with the petition.

8. On close scrutiny, it appears that the petitioner and the respondent are legally wedded wife and husband, their marriage was solemnized as per Hindu rituals on 29.6.2009. Out of their wedlock, they have been blessed with a girl child, presently aged about 04 years and the petitioner is taking care of her child. Distance from Bhattapara to Durg is about 110 km. As per the distribution memo shown, it appears that Additional District Judge, Bhattapara is given jurisdiction to dispose of the matter arising out of Hindu Marriage Act, the petitioner is a woman, she has no independent source of income, presently living under the shelter of her father and is taking care of her child. Upon considering the entire facts it would be appropriate to allow the petition and transfer the matter from Durg to Bhattapara.

9. consequently, transfer petitioner is allowed. It is ordered that Civil Suit No.34A/14 (Dipesh Bafna vs. Smt. Dipika Bafna) pending before First Additional Principal Judge Family Court, Durg, under Section 13 of the Hindu Marriage Act, for dissolution of marriage by a decree of divorce, be withdrawn and transferred to Additional District Judge, Bhattapara, District Baloda Bazar for its trial/disposal in accordance with law. The Court below at Durg is hereby directed to transfer immediately the concerned record to Additional District Judge, Bhattapara for further proceedings. The petition is allowed. No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE