

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (C) No.43 of 2014**

Smt. Kiran Baisnav, aged about 21 years, W/o. Bishwas Das Baisnav, R/o. Village Ghotiya, Tahsil & PS Pallari District Baloda Bazar (CG)

---- **Petitioner**

Versus

Bishwas Das Baisnav, aged about 43 years, S/o. Ajay Das Baisnav, R/o. Dau-Chhal Baldev Bag, Rajnandgaon, (CG)

---- **Respondent**

Shri Hemant Gupta, counsel for the appellant.
Shri Rakesh Thakur, counsel for the respondent.

Order On Board**07/9/2015**

By this order, transfer petition (civil) filed by the petitioner seeking transfer of Civil Suit No.68-A/13(Bishwas Das Baisnav Vs. Smt. Kiran Baisnav), pending before Family Court, Rajnandgaon under Section 9 of the Hindu Marriage Act, 1955, to the Court of Baloda Bazar, Distt. Baloda Bazar, is being disposed of.

2. As per the brief facts of the petition, marriage between the petitioner and the respondent was solemnized on 25.6.2012 with Hindu rites and customs. The respondent-husband filed a civil suit under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which is pending before the Court of Rajnandgaon. The petitioner also filed miscellaneous judicial case under Section 125 of the Code of Criminal Procedure (MJC No.46/13) before Judicial Magistrate First Class, Baloda Bazar. The petitioner is an unemployed woman of 21 years presently residing with her old aged parents. In the civil suit, the court below has allowed the application under Section 24 of the Hindu Marriage Act, she has been granted litigation cost of Rs.3,000/- and Rs.500/- for traveling expenses. It is inconvenient for the petitioner to travel from Baloda Bazar to Rajnandgaon to attend the Court

proceedings. The respondent is a journalist by profession and his sister is a practicing lawyer and also amicus curie under Section 13 of the Family Courts Act, 1984 for the respondent. As the other litigation is pending before the Baloda Bazar Court on behalf of the petitioner it is prayed that matter pending before the Court of Rajnandgaon may also be transferred to the Court of Baloda Bazar for further trial.

3. On behalf of the respondent, reply has been filed wherein it is submitted that the petitioner failed to prove the ground taken in the petition for biasness in the trial. For once only the sister of the respondent represented the respondent. The petitioner is not cooperating with the trial before the Family Court. Even in the maintenance petition pending before Baloda Bazar, the petitioner is trying to keep the matter pending which goes to show that she is not interested in disposal of the matter. The Family court also vide order dated 10.10.14 held that the petitioner wants to keep the matter pending and the concerned family Court Judge dismissed the application under Section 10 of the CPC for staying the proceedings. It is further stated that as the ground taken are not proved the petition may be dismissed.

4. Heard both the contesting parties on the instant appeal.

5. Learned counsel for the petitioner duly supported the ground taken in the instant petition and submitted that the petitioner is a woman, aged about 21 years, with no means for her maintenance having shelter in the family of her old aged parents. She is facing inconvenience for going to Rajnandgaon to attend the hearing date hence, the petition may be allowed and the above mentioned civil suit may be transferred from the Court of Rajnandgaont to the court of Baloda Bazar.

6. On the other hand, learned counsel for the respondent opposed the petition and submitted that the petitioner has failed to prove the ground taken in the petition and it is nowhere proved that when there was any apprehension for bias in the trial, sister of the respondent only once appeared on behalf of the respondent, the petitioner has been granted traveling expenses, she is not cooperating in the trial for restitution of conjugal rights, hence, the petition may be dismissed.

7. In order to appreciate the arguments advanced on behalf of the parties, I have perused the material available on record.

8. On close scrutiny, it appears that both the contesting parties are husband and wife. Petitioner is aged about 21 years, living at village Ghotiya, Police Station Palari, Distt. Baloda Bazar (CG) along with her parents. The appellant is residing at Rajnandgaon. He has filed civil suit No.68-A/13 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and the same is pending before Family Court, Rajnandgaon for about 2 years 2 months. An application MJC No.46/13 is also pending before the Court of Baloda Bazar filed by the petitioner for maintenance. Though there is ground taken for the apprehension of unfairness but during the arguments nothing submitted on this behalf. Looking to the ground available and arguments advanced by the counsel on behalf of the petitioner, and also considering that other matter is pending before the Criminal Court of Baloda Bazar regarding maintenance and also considering that the petitioner is a woman, no independent income, has taken shelter with her old aged parents, inconvenience of the petitioner to travel from Baloda Bazar to Rajnandgaon, it would be appropriate to transfer the matter from Ranjandgaon to Baloda Bazar. Upon due consideration of

the entire facts, the transfer petition is liable to be allowed. Consequently, the petition is allowed.

9 It is ordered that Civil Suit No.68-A/13 pending before Judge Family Court, Rajnandgaon (Bishwas Das Baisnav Vs. Smt. Kiran Baisnav) be withdrawn and transferred to the Court of competent jurisdiction at Baloda Bazar for its trial and disposal in accordance with law. The Judge Family Court Rajnandgaon is directed to transfer immediately the concerned records towards the concerned Court for further proceedings. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE