

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (C) No.35 of 2015**

Smt. Tikeshwari @ Ranjandani Nirmalkar, aged 20 years, W/o. Shri Raju Nirmalkar, D/o. Shri Ramesh Nirmalkar, R/o. Deepak Kirana Stores, Near Govt. School, Daldal Sivni (Mova) Distt. Raipur.

---- **Petitioner**

Versus

Raju Nirmalkar, aged 28 years, S/o. Late Shri Ramesh Nirmalkar, Mother Smt. Uma Nirmalkar, R/o. E-13, Bijli Nagar, Bhilai-3, District Durg (CG)

---- **Respondent**

Shri JK Gupta, counsel for the petitioner.

Shri Rudra Nath Mukherjee, counsel for the respondent.

Order On Board

16.11.2015.

By this order, transfer petition (civil) filed by the petitioner seeking transfer of Civil Suit No.91A/15 (Raju Nirmalkar vs. Smt. Tikeshwari @ Rajnandini) under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights, pending before 3rd Additional Principal Judge, Family Court, Durg (initially filed before Principal Judge Family Court, Durg) to the Principal Judge Family Court, Raipur, is being disposed of.

2. As per brief facts of the petition, the petitioner and the respondents are legally wedded wife and husband and their marriage was solemnized on 20.6.14 and out of their wedlock they are blessed with one son who born on 11.5.15. Thereafter dispute arose between the parties and the petitioner filed an application for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the respondent which is pending. The respondent has filed Civil Suit No.91A/15 before Family Court Durg for restitution of conjugal rights which is also pending. The petitioner has prayed for transfer of the said civil suit from Durg to Raipur on the grounds that

already matrimonial matter under Section 125 of the Code is pending before Family Court, Raipur, the petitioner has six month old child with her, it would be highly inconvenient for her to leave the child and attend the Court proceedings at Durg, the petitioner's father is suffering from arthritis, hence, he cannot escort her, there is no any male member in the family to escort her to attend the Court at Durg and also as the respondent is regularly appearing before the court of Raipur in the maintenance matter, the above mentioned civil suit be transferred from Durg to Raipur.

3. On behalf of the respondent no any written response has been filed, instead the petition has been opposed orally.

4. Heard the matter finally.

5. Learned counsel for the petitioner supported the grounds taken in the petition and submitted that on the basis of the grounds mentioned in the petition, the petition may be allowed.

6. Learned counsel for the respondent opposed the petition and submitted that by the order of the court below, the petitioner is getting interim maintenance of Rs.1000/- per month, hence, she has no financial constrain to attend the Court at Durg. The petitioner is living in the joint family and she can entrust her child to someone in the family to take care of him while she attends the Court at Durg. On behalf of the respondent it is further submitted that as the petitioner has failed to demonstrate the ground on which the matter as prayed may be transferred, the petition may be dismissed as not maintainable.

7. For appreciating the arguments advanced on behalf of the parties, I have perused the petition 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 their marriage was solemnized as per Hindu rituals on 20.6.14. Out of their wedlock, they have been blessed with a male child and the petitioner is taking care of her child. One matter under Section 125 of the Code is pending before Family Court, Raipur in which as per the order sheet annexed, the respondent is appearing himself regularly. Considering the facts that the matter for maintenance is pending before Family Court Raipur, the petitioner is a woman, she has to take care of her small child, aged about 6 months, the petitioner has no any independent source of income, living with her parents, it would be appropriate to transfer the matter from Durg to Raipur.

9. On entire consideration of the facts, the transfer petition is liable to be allowed. Consequently, the petition is allowed. It is ordered that Civil Suit No.91A/15 (Raju Nirmalkar vs. Smt. Tikeshwari @ Rajnandini) pending before 3rd Additional Principal Judge Family Court, Durg under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights (initially filed before Principal Judge, Family court, Durg) be withdrawn and transferred to Principal Judge Family Court, Raipur for its trial/disposal in accordance with law. The Court below at Durg is hereby directed to transfer immediately the concerned record to Principal Judge Family Court, Raipur for further proceedings. The petition is allowed. No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE