

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (C) No. 48 of 2015**

Smt. Nutan Singh W/o Harsh Kumar Thakur, Aged About 30 Years
Occupation House Wife, R/o Village Ramanujganj, Thana & Tehsil
Ramanujganj, Civil And Revenue District Surajpur
(Chhattisgarh).....(Non Applicant)

---- Petitioner**Versus**

Harsh Kumar Thakur S/o Shri Krishna Singh Thakur, Aged About 35
Years R/o Village Lormi (Ranigaon), Police Station And Tehsil Lormi,
Civil District Bilaspur, Revenue District Mungeli (Chhattisgarh)

---- Respondent

For Petitioner	:	Shri Umakant Singh Chandel, Advocate.
For Respondent	:	Shri Sunil Sahu, Advocate.

Order On Board**23/12/2015**

1. At the instance of the parties matter is heard finally.
2. By this order, Transfer Petition (Civil) filed by the Petitioner seeking transfer of Civil Suit No. 192-A/2015 (Harsh Kumar Thakur vs. Smt. Nutan Singh) under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage by a decree of divorce pending before the Judge, Family Court, Bilaspur, Chhattisgarh to the Court of Judge, Family Court, Surajpur, Chhattisgarh, is being disposed of.
3. As per the facts mentioned in the instant Transfer Petition (Civil), in brief, both the Petitioner and the Respondent are legally wedded wife and husband. Their marriage was solemnized in the year 2005 as per Hindu customs. Out of their wedlock, two children took birth (a male child aged about 9 years and a female child aged about 4 years) and presently they are living with the Petitioner. The Petitioner had filed an application for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (in

short 'the Code') before the Judicial Magistrate, First Class, Surajpur, which was registered as MJC No. 61 of 2013 (new number is 130 of 2015). The Petitioner had also filed MCrC No. 49 of 2013 (Smt. Nutan Singh vs. Harsh Kumar Thakur) under the provisions of the Protection of Women from Domestic Violence Act, 2005 (in short 'the Act, 2005')), in which, vide order dated 30.6.2014, the concerned Magistrate ordered for Rs.8,000/- per month as maintenance payable to the Petitioner and even after such order no amount has been paid to the Petitioner. Hence, the Petitioner filed an application for execution of the said order, which is pending before the Judicial Magistrate, First Class, Surajpur as MJC No. 100 of 2014. Further grounds have been taken that she is a woman, she has no independent source of income and is presently residing with her parents alongwith two children, Bilaspur is about 300 km away from Surajpur and she is required to appear on each and every date before the Court in the proceedings under Section 13 of the Hindu Marriage Act. Hence, it is prayed that the matter pending before Bilaspur Court may be transferred to Surajpur Court for further trial.

4. On behalf of the Respondent no return/reply is filed.
5. Heard Learned Counsel for the parties and perused the record.
6. Learned Counsel for the Petitioner supported the entire grounds taken in the petition and submitted that looking to the entire grounds taken, the matter may be transferred from Bilaspur to Surajpur for further trial.
7. Per contra, Learned Counsel for the Respondent argued that as per the order passed by the Judicial Magistrate, First Class, Surajpur, he has deposited the entire amount as ordered. He is ready to pay the travelling expenses and other expenses for which the Petitioner may file an application under Section 24 of the Hindu Marriage Act and get an appropriate order

from the Bilaspur Court. The Respondent has a reasonable apprehension that in case the matter is transferred from Bilaspur to Surajpur and he is required to attend the proceedings at Surajpur, there may be some harm to his body. Hence, he prays that the matter may be transferred to another place except Surajpur.

8. For the purposes of appreciation of the entire arguments advanced, I have perused the records.

9. On a close scrutiny, following facts emerge that the parties are legally wedded wife and husband. Out of their wedlock, one male and female child have taken birth, presently aged about 9 and 4 years respectively and they are living with the Petitioner. The Petitioner is residing within the jurisdiction of Surajpur and has taken shelter of her parents for her livelihood. The distance from Surajpur to Bilaspur is about 300 Kms. There is no source of income of the Petitioner. She had also filed MCrC No. 49 of 2013 in the Court of Judicial Magistrate First Class, Surajpur for maintenance in which she has obtained an order on 30.6.2014 that she is entitled for Rs. 8000/- per month towards maintenance under the provisions of Section 20 (1) of the Act, 2005 and she had also filed an application for execution of the same order which is pending. It is also emerged that no written response alongwith affidavit has been filed on behalf of the Respondent in the matter. The matter was opposed on behalf of the Respondent orally. Thereby, there is no rebuttal with regard to facts mentioned in the transfer petition, affidavit and the documents alongwith petition.

10. On due consideration of the matter, this Court is of the view that the Petitioner had made out a case in her favour that the petition under Section 13 of the Hindu Marriage Act, presently pending before Bilaspur Court deserves to be transferred to Surajpur.

11. In view of the above, the transfer petition is liable to be allowed. Hence, the same is allowed. It is ordered that the Civil Suit No. 192-A of 2015 (Harsh Kumar Thakur v. Smt. Nutan Singh) under Section 13 of the Hindu Marriage Act for dissolution of marriage and decree of divorce pending before Judge, Family Court, Bilaspur, Chhattisgarh be withdrawn and transferred to Judge, Family Court, Surajpur Chhattisgarh for its trial/disposal in accordance with law. Learned Judge, Family Court, Bilaspur is hereby directed to transmit immediately the concerned record to Judge, Family Court, Surajpur, Chhattisgarh for further proceedings.

12. The transfer petition is allowed.

13. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge