

HIGH COURT OF CHHATTISGARH, BILASPUR

TPC No. 15 of 2014

- Smt. Vandita Kesharwani W/o Arvind Kesharwani Aged About 28 years R/O Sheorinarayan, P.S. Sheorinarayan, Distt. Janjgir-Champa C.G.

---- Petitioner

Versus

- Arvind Kesharwani S/o Om Prakash Kesharwani Aged About 30 Years R/O Village- Lavan Road, Baloda Bazar, Distt. Baloda Bazar C.G.

---- Respondent

For Petitioner	: Shri C.D. Sharma, Advocate.
For Respondent	: Shri Prakash Tiwari, Advocate.

Order On Board

09/03/2015

1. By this order, Transfer Petition (Civil) filed by the petitioner for transfer of Civil Suit No.(HMA) 11-A/2013 (Arvind Kesharwani -v- Smt. Vandita Kesharwani) pending before Judge, Family Court, Baloda Bazar (1st Additional Distt Judge, Baloda Bazar as appearing in the documents filed) to the court of Judge, Family Court, Bilaspur is being disposed of.
2. As per facts of the case, respondent and the petitioner are husband and wife. Respondent filed an application under Section 13 of the Hindu Marriage Act (in brevity 'Act') for dissolution of marriage by a decree of divorce against the petitioner before the Judge, Family Court, Baloda Bazar. In reply to above civil suit, the petitioner filed a cross suit under Section 9 of the Act for restitution of conjugal rights which is still pending in the main petition. Petitioner's mother Rashmi Bala Kesharwani is blind by both eyes. She is being looked after by her husband and the petitioner. For

24 hours, one has to remain present with her to take care of her at Bilaspur where petitioner resides with her maternal-grand-mother. If the suit is transferred from Baloda Bazar to Bilaspur, it would be convenient for the petitioner to attend the proceedings. Hence by filing the petition, the petitioner prayed to this Court that the above mentioned suit be transferred as prayed.

3. Respondent has filed his written response to the petition and submitted that the petitioner is residing at Shivari Narayan, Distt. Janjgir Champa. From Shivari Narayan, Baloda Bazar is about 45 km away. From Shivari Narayan to Bilaspur distance is about 84 km. Looking to the difference of distance from Shivari Narayan to both the places, Baloda Bazar would be more convenient for the petitioner. Besides this, the petitioner has not assigned any specific and satisfactory reason for transferring the matter to district Bilaspur. It is also submitted that to meet expenses of the petitioner, the respondent has already deposited money towards maintenance of Rs. 17,000/- on 9-1-2015 before the concerned court. Respondent is carrying out his business at Baloda Bazar. He is sole person to look into his business. Hence the petition may be dismissed as not maintainable.

4. Heard learned counsel for both the parties.

5. Learned counsel for the petitioner vehemently argued that her mother is blind and except the petitioner her father is in the family. Blind mother has to be taken care of 24 hours. Her maternal-gran-mother resides at Bilaspur. If the case is transferred from Baloda Bazar to Bilaspur, it would be convenient for the petitioner as she can leave her mother in the custody of her maternal-grand-mother and it would be convenient for the petitioner to attend court proceedings. He further submitted that looking to the above facts, case may be transferred from Baloda Bazar to Bilaspur.

6. Per contra, learned counsel for the respondent submitted that besides this ground, no other specific allegation regarding cruelty or otherwise is levelled against the respondent. He submitted that from Shivari Narayan to Baloda Bazar, distance is about 40 km. From Shivari Narayan to Bilaspur, distance is about 85 km. The petitioner has no issue. There would be no hardship for the petitioner in attending the court at Baloda Bazar. Hence the petition may be dismissed.

7. Reliance is placed by learned counsel for the respondent in the matter of Babita -v- Chander Pal Sharma reported in 2011 LawSuit (P&H) 4141 wherein learned Single Bench has held that as the petition filed by the petitioner prior in time and also no reason to direct transfer of the divorce petition from Sirsa to Hisar, the distance of 100 km. is also

insufficient to direct transfer of the case from Sirsa to Hisar, hence dismissed the petition. Further reliance is placed in the matter of Archna Singh -v- Dilip Singh reported in 2013 Lawsuit (MP) 2732 wherein learned Single Bench of High Court of M.P. has held that though respondent is a practising lawyer at Damoh but if there is apprehension that some unhappy incident may happen with her on going to Damoh, the trial court is at liberty to consider the prayer of the applicant if submitted, looking to entire facts and circumstances of the case, the High Court of M.P. by the decision dismissed the transfer petition filed by the petitioner. Learned counsel submitted that on the basis of principles laid down in the above cases, the petition may be dismissed.

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

9. From a perusal of entire facts and circumstances, it emerges that the petitioner is not having any issue, she is aged about 28 years, she lives at Shivari Narayan and as per written response supported by affidavit, the distance between Shivari Narayan and Baloda Bazar is lesser than distance between Shivari Narayan and Bilaspur. This fact is not contradicted by opposite side. From perusal of copies of order sheet, it is revealed that the petitioner is permitted for assistance of legal expert as *Amicus Curiae* as provided in proviso to Section 13 of the Act. If the distance is lesser and father of the petitioner is available in the family to take care of mother, the petitioner may very well attend the court proceeding. It is not the case that she is not being awarded towards maintenance.

10. Looking to the entire facts and circumstances, in the opinion of this Court, the petitioner has failed to make out a case for transfer of the case from Baloda Bazar to Bilaspur.

11. Consequently, the petition fails and is dismissed.

12. No order as to costs.

Sd/-

JUDGE