

HIGH COURT OF CHHATTISGARH, BILASPUR

TPC No. 34 of 2014

- Smt.Pramila Sahu W/o Premlal Sahu Aged About 32 years R/O Bagbuda, Tah. And P.S. Kasdol, Up-Tah. Lawan, Distt. Baloda Bazar C.G., At Present R/O Kodbhath, Tah. And P.S. Pamgarh, Distt. Janjgir-Champa C.G.

---- Petitioner

Versus

- Premlal Sahu S/o Lekhram Sahu Aged About 34 Years R/O village Bagbuda, Tah. And P.S. Kasdol, Up-Tah. Lawan, Distt. Baloda Bazar C.G.

---- Respondent

For Petitioner : Shri Gautam Khetrapal, Advocate
For Respondent No. : Shri R.S. Patel, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

04/03/2015

1. By this order, Transfer Petition (Civil) filed by the petitioner for transfer of Civil Suit No. H-30A/2014 (Premlal Sahu -v- Smt. Pramila Sahu) pending in the Court of Distt. Judge, Baloda Bazar to the Court of Judge, Family Court, Janjgir Champa is being disposed of.
2. As per facts of the case, in brief, marriage between the petitioner and the respondent was solemnized on 2-5-2004 at village Kodbhat, Tehsil Pamgarh, Dist. Janjgir Champa. Petitioner filed an application under Section 9 of the Hindu Marriage Act (in brevity 'Act') against the respondent before Judge, Family Court, Janjgir Champa bearing Civil Suit No. 9-A/2014. In the said litigation notices were issued to respondent and respondent Premlal Sahu gave his personal appearance on 22-2-2014 and thereafter he is taking part in the civil suit No. 9-A/2014. Even on 22-4-2014, respondent took part in the mediation proceeding at Janjgir Champa. During the pendency of this civil suit filed by the petitioner, respondent filed a suit under Section 13 of the Hindu Marriage Act against the petitioner before the Court of District Judge, Baloda Bazar on 7-5-2014 for dissolution of marriage by a decree of divorce which is pending. The petitioner

is having minor children. It is difficult for her to travel and change buses to attend hearing at Baloda Bazar along with her minor children. As per petitioner, petitioner is under continuous threat from the respondent for dire consequences. The petitioner is not in a position to defend herself at Baloda Bazar and the case is filed by petitioner under Section 9 of the Hindu Marriage Act before the case filed by the respondent under Section 13 of the Act at Baloda Bazar, therefore, it would be proper that the civil suit pending before the Court of District Judge, Baloda Bazar bearing Civil Suit H No. 30A/2014 be transferred to the Court of Judge, Family Court, Janjgir Champa. Petition is supported by affidavit of the petitioner.

3. Heard learned counsel for the parties and perused the petition and other documents filed by the petitioner.
4. Learned counsel for the petitioner elaborately supported the pleading made in the petition and submitted that looking to the facts and circumstances of the case, the petition may be allowed and the concerned civil suit may be transferred accordingly.
5. On the other hand, learned counsel for the respondent opposed the petition and submitted that as no ground for transfer of the civil suit is available to the petitioner, the petition may be dismissed.
6. In support of his argument, the learned counsel for the petitioner placed reliance on the matter of **Sumita Singh vs. Kumar Sanjay and another**¹, wherein Hon'ble the Supreme Court held that:-
 "3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute.
 4. Accordingly, Matrimonial Case No. 30 of 2000 pending before the VIth Additional District and Sessions Judge, Ara, Bhojpur, Bihar shall stand transferred to the District Judge, Delhi, who shall hear it himself or assign it for hearing to an appropriate forum."

7. Hon'ble the Supreme Court on the basis of wife working at Delhi, suit filed by the husband at place far off from Delhi, allowed the petition and transferred the suit for trial to Delhi.
8. For the purpose of appreciation of arguments advanced by the parties, I have perused the documents adduced on behalf of the parties.
9. A minute scrutiny of the facts and circumstances of the case goes to show that after filing petition by the petitioner under Section 9 of the Act before the Court at Janjgir Champa, after 4 ½ months, the respondent filed a petition under Section 13 of the Act at Baloda Bazar against the petitioner. Prior to filing of his civil suit, he appeared before the Judge Family Court, Janjgir Champa on 22-2-2014 and thereafter he is continuously taking part in the said proceeding including the proceeding for mediation. As per facts adduced in the petition, the petitioner is having 2 minor children.
10. Having considered the facts and circumstances of the case and the case law cited, in the opinion of this Court, it would be appropriate if both the case are tried and disposed of by the same judge so as to evaluate the entire facts and circumstances properly. Further it the inconvenience of the petitioner which has to be given weightage as per the case law cited, therefore the prayer made by the petitioner is just and proper.
11. Consequently, the transfer petition deserves to be and is hereby allowed. It is ordered that the Civil Suit No. H-30A/2014 (Premlal Sahu -v- Smt. Pramila Sahu) pending in the Court of District Judge, Baloda Bazar be withdrawn and transferred to the Judge, Family Court, Janjgir Champa for its trial/disposal in accordance with law. The Distt. Judge, Baloda Bazar is directed to transmit the record of the above suit to the Court of Judge, Family Court, Janjgir Champa for further proceedings.
12. No order as to costs.

JUDGE

