

HIGH COURT OF CHHATTISGARH, BILASPUR

TPC No. 19 of 2014

1. Smt.Uma Dubey W/o Ajay Shankar Dubey Aged About 36 years R/O Bhole Nagar, Beladula, Thana- Chakradhar Nagar, Raigarh C.G.

---- Petitioner

Versus

1. Ajay Shankar Dubey S/o Ganesh Shankar Dubey Aged About 37 Years R/O Sahbahara, Thana- Sarbahra, Tah. Pendra Road, Distt. Bilaspur C.G.

--- Respondent

For Petitioner : Shri Shashi Kushwaha, Advocate.
For Respondent : Shri Saleem Kazi, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

09/03/2015

1. By this order, Transfer Petition (Civil) filed by the petitioner for transfer of Civil Suit No. 30-A/2013 (Ajay Shankar Dubey -v- Uma Dubey) under Section 9 of Hindu Marriage Act pending in the court of Additional District Judge, Pendra Road, Distt. Bilaspur to the Court of Judge, Family Court, Raigarh is being disposed of.
2. Brief facts of the case are that marriage of petitioner and respondent was solemnized on 1-12-2009. Out of their wedlock petitioner gave birth to daughter Falguni Dubey on 21-5-2011. On account of cruelty and other circumstances, the petitioner filed a petition for maintenance under Section 125 of the Code of Criminal Procedure on 4-9-2013 which is presently pending before the Judge Family Court, Raigarh. Thereafter respondent on 17-10-2013 filed a civil suit under Section 9 of the Hindu Marriage Act (in brevity 'Act') for restitution of conjugal rights which is pending before Additional District Judge, Pendra Road, Distt. Bilaspur bearing Civil Suit No. 30-A/2013. By filing the transfer petition, petitioner submitted that there is no

easy conveyance to appear before the Court at Pendra Road. She is having a infant aged about 3 years. She has to change train at Bilaspur causing inconvenience. Further she is suffering from solar allergic dermatitis (Annexure P-2) and she is advised to avoid sun exposure. Looking to above mentioned facts and circumstances, it is inconvenient for her to give her appearance / representation before the Court at Pendra Road. Hence the case pending before the Court at Pendra Road may be transferred to the Court of Judge, Family Court, Raigarh, CG.

3. Heard learned counsel for both the parties.
4. Learned counsel for the petitioner duly supported the petition and submitted that on the basis of the grounds taken in the transfer petition, the case may be transferred from Pendra Road to Raigarh.
5. Per contra, learned counsel for the respondent opposed the petition and submitted that there is no inconvenience for her in attending the Court at Pendra Road, there are frequent trains available in the route. Hence the petition may be dismissed being not maintainable.
6. In order to appreciate the arguments advanced on behalf of the parties, I have perused the material available.
7. From the entire facts and circumstances, it is emerged that the parties are husband and wife married on 1-12-2009. Out of their wedlock there is one female child namely Falguni Dubey. Petitioner filed a petition under Section 125 of the Cr.P.C. on 4-9-2013 before the Judge, Family Court, Raigarh. Subsequently, respondent filed a petition under Section 9 of the Act on 17-10-2013 before Additional District Judge, Pendra Road. The petition for maintenance is filed prior in time to the petition for restitution of conjugal right, the petitioner is a lady having 3 years minor child, further looking to the facts that the distance from Raigarh to Pendra Road and as the respondent is already giving his appearance at Raigarh in the maintenance case, also the respondent is a doctor by profession, in the opinion of this Court, it would be just and proper that both the cases be tried by same judge.
8. On due consideration of entire facts and circumstances of the case, the

transfer petition filed by the petitioner deserves to be and is hereby allowed.

It is ordered that the Civil Suit No. 30-A/2013 (Ajay Shankar Dubey -v- Uma Dubey) under Section 9 of the Act pending before the Court of 1st Additional District Judge, Pendra Road, CG be withdrawn and transferred to the court of Judge, Family Court, Raigarh for its trial/disposal in accordance with law. The 1st Additional District Judge, Pendra Road is directed to transmit the record of the above suit to the court of Judge, Family Court, Raigarh for further proceedings.

No order as to costs.

J U D G E

Pathak