

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (Civil) No.45 of 2015**

Smt. Hareshwari Patel W/o Shri Rajesh Patel, Aged About 22 Years D/o Ramkumar Patel, R/o Through Ramkumar Patel, Ramnagar Muktidham, Near Ramjanki Mandir Ward No. 13 Bhilai, Police Station And Tehsil Bhilai, Post Supela, District Durg, Chhattisgarh

---- Petitioner**Versus**

Rajesh Patel S/o Shri Ganpat Patel, Aged About 31 Years R/o Village Doto (Ramnagar) P. S. And Tehsil Bilaigarh, District- Balodabazar - Bhatapara, Chhattisgarh

---- Respondent

For Petitioner	:	Shri Avinash Chand Sahu and Shri Punit Ruparel, Advocates.
For Respondent	:	Shri Anand Kesharwani, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****14/01/2016**

1. Even after availing two opportunities no written response/objection has been filed on behalf of the Respondent.
2. Heard the matter finally at the motion stage itself.
3. By this order, Transfer Petition (Civil) filed by the Petitioner seeking transfer of Civil Suit No. 49A of 2015 (Rajesh Patel vs. Smt. Hareshwari Patel) filed under Section 9 of the Hindu Marriage Act, 1955 (for short 'Act of 1955') for restitution of conjugal rights pending before the District Judge, Baloda Bazar, Chhattisgarh to the Judge, Family Court, Durg, Chhattisgarh, is being disposed of.
3. Brief facts of the instant transfer petition are that the Petitioner and the Respondent are legally wedded wife and husband. The marriage was solemnized as per rituals and customs at Bhilai on 29.04.2012. Out of their

wedlock, the Petitioner gave birth to a girl child presently, who is aged about 14 months and is presently residing with the Petitioner. Now, the Petitioner is again carrying pregnancy of about 9 months and as per sonography report, the expected date of delivery is 29.1.2016. She is a housewife, does not have any independent source of income and is residing with her parents. No maintenance amount is being received by her from the Respondent/husband though she has not preferred any proceedings for maintenance. On 10.7.2015, she made a complaint before the Station House Officer, Mahila Thana, Durg under the provisions of Section 498A IPC and other relevant provisions of law. As per the information, the police registered an offence against the Respondent and his mother and father. The Petitioner is not aware of any further proceedings in the matter. As stated, the Petitioner has to travel by train from Bhilai to Bhatapara then by road transport up to Baloda Bazar and again she has to hire services of an auto-rickshaw for reaching and attending the matter before the Court at Baloda-Bazar. There is no direct conveyance and now she is at advance stage of pregnancy and further, after delivery she has to take care of infant. Hence, it is prayed that the petition filed for the restitution of conjugal rights by the Respondent before the Court at Baloda-Bazar may be transferred from Baloda Bazar to Family Court at Durg, Chhattisgarh.

4. On behalf of the Respondent, no written response/objection has been filed despite availing opportunities.

5. Heard learned counsel for the parties and perused the material available.

6. Learned counsel for the Petitioner/wife supported the grounds taken in the instant petition and submitted that on the basis of the facts mentioned in

the petition the aforementioned case may be transferred from Baloda-Bazar to Durg, Chhattisgarh.

7. Learned counsel for the Respondent/husband submits that the distance from Baloda-Bazar to residence of the Respondent is about 120 kms. The Respondent is to first reach Bhatgaon and thereafter through surface transportation he is to rush to Baloda Bazar. Learned counsel further submits that though he had no definite information but an offence is registered against the Respondent and his parents and the same would be triable before the Court of JMFC, Bhatgaon. The Respondent is unemployed. After marriage, the parties were residing at Raipur, Baloda-Bazar, which is situated at an equal distance both from the residences of the Petitioner and the Respondent. If the said case is transferred from Baloda-Bazar to Durg, it would be inconvenient for the Respondent/husband to attend the Court at Durg and therefore, the petition may be dismissed.

8. On a close scrutiny of the facts stated in the instant petition and the documents annexed thereto it emerges that the parties are husband and wife married on 29.4.2012. Out of their wedlock, the Petitioner gave birth to a girl child presently aged about 14 months living with the Petitioner. The Petitioner is in advance stage of pregnancy and as per sonography report due date of delivery is in this month. She is a housewife and has no independent source of income. Presently, she is residing with her parents and taking their shelter for her livelihood. After delivery, she will have to take care of both the children. On due consideration of the above facts, the convenience of the Petitioner has to be given due weightage.

9. On due consideration and after appreciation of the entire facts, it would be appropriate to allow the instant petition and transfer the case from Baloda-Bazar to Durg. Consequently, the instant Transfer Petition (C) is hereby allowed.

10. It is ordered that Civil Suit No.49A of 2015 between Rajesh Patel and Smt. Hareshwari Patel instituted under Section 9 of the Hindu Marriage Act for restitution of conjugal rights pending before the District Judge, Baloda-Bazar, Chhattisgarh be withdrawn and transferred to the Principal Judge, Family Court, Durg, Chhattisgarh for its trial/disposal in accordance with law.

11. The District Judge, Baloda-Bazar, Chhattisgarh is hereby directed to transmit immediately the concerned record to Family Court, Durg, Chhattisgarh for further proceedings.

12. No order as to costs.

Sd/-

Chandra Bhushan Bajpai
Judge