

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (Civil) No. 57 of 2015**

Smt. Mini Skariya Verghese W/o Skariya Verghese, Aged About 36 Years Occupation - Job As A Nurse, R/o S E C L Main Hospital, Mudapur, P. O. Korba, District Korba (Chhattisgarh)

---- Petitioner**Versus**

Skariya Verghese S/o V. T. Verghese, Aged About 38 Years Occupation - Job, R/o F-4, O. P. Jindal School Housing Colony, J S P L Raigarh, District Raigarh (Chhattisgarh)

---- Respondent

For Petitioner	:	Shri Sanjay Patel, Advocate.
For Respondent	:	Shri T.K. Jha, Advocate.

Order On Board**06/01/2016**

1. The matter is heard finally.
2. By this order, Transfer Petition (Civil) filed by the Petitioner seeking transfer of Civil Suit No. F27A of 2014 (Skariya Verghese vs. Smt. Mini Skariya Verghese) filed under Section 10 of the Indian Divorce Act, 1869 (for short 'Act of 1869') for dissolution of the marriage by a decree of divorce pending before the Judge, Family Court, Raigarh, Chhattisgarh to the Judge, Family Court, Korba, 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 on 02.02.2003 at Jabalpur, Madhya Pradesh. After certain developments, the Respondent had filed the aforementioned civil suit for dissolution of marriage which is pending before the Judge, Family Court, Raigarh, Chhattisgarh. The Petitioner had taken the ground that she is working as a Staff Nurse in South Eastern Coalfields

Limited, Korba (for short 'SECL') and her duty was in Operation Theater. Therefore, she was unable to take leave to attend the hearing at Raigarh. Her brother twice appeared before the Court below on 13.5.2014 and 16.5.2014. The distance between Raigarh to Korba is about 150 kms. Initially, the Respondent had filed an application under Section 32 of the Act of 1869 for restitution of conjugal rights which was dismissed by the Family Court, Raigarh. The Respondent was working as Sports Teacher in Jindal Steel and Power Limited, Raigarh. He used to travel to other cities in connection with his official duty. There will be no inconvenience if the matter is transferred from Raigarh to Korba. The Petitioner is employed at Korba and therefore her convenience may also be considered. It is lastly submitted on behalf of the Petitioner that the petition may be allowed and the aforementioned civil suit may be transferred from Raigarh to Korba.

4. The Respondent had filed the written response/objection alongwith certain annexed documents to the petition wherein it is mentioned that out of their wedlock a male child was born on 11.7.2004 and he is presently residing with the Petitioner and no other litigations between the parties are pending before the Korba Court. Prior to the present matter under Section 10 of the Act of 1869, the Respondent had filed the petition under Section 32 of the Act of 1869. After hearing the matter, wherein the Petitioner remained *ex parte*, the Family Court, Raigarh dismissed Civil Suit No. 63A of 2012 for restitution of the conjugal rights. After the dismissal, the Respondent had no option but to file a civil suit under Section 10 of the Act of 1869. The Respondent is working in a private institution. As per direction of the employer/Institution of the Respondent, the Respondent has to accompany team of various disciplines in sports to different cities regarding sports competitions and tournament. The Respondent is also suffering with high

blood pressure and diabetes. On the other side, the Petitioner is a staff nurse in SECL which is a government of India undertaking institution.

5. The Petitioner had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005') before the Judicial Magistrate, First Class, Umariya, Madhya Pradesh which was registered as Misc. Case No.30 of 2011 wherein the trial Court i.e. Judicial Magistrate First Class, Umariya (JMFC) disposed of the matter on 13.2.2014 with certain directions mentioned in paragraph 15 of the Judgment.

6. Against the said judgment, the Petitioner preferred an appeal with a prayer to enhance the amount of maintenance as ordered by the JMFC and the same is pending before the Sessions Judge, Umariya under relevant provisions of Section 29 of the Act of 2005. It is also submitted on behalf of the Respondent that if the Petitioner prosecutes him at Umariya despite her entire nature of service as aforementioned she can very well attend the Court at Raigarh and also the Petitioner has failed to demonstrate any reason for transfer of the matter to Korba and therefore, the transfer petition may be dismissed.

7. Heard Learned Counsel for the parties.

8. Learned counsel for the Petitioner elaborately supported the grounds taken in the petition and submits that on the basis of the said grounds, the petition may be allowed and the matter pending before the Court below may be transferred from Raigarh to Korba.

9. Learned counsel for the Respondent in reply pleaded that the Petitioner has failed to show any reasonable cause for transfer and as per the facts mentioned in the reply, the petition may be dismissed.

10. For the purposes of appreciation regarding the arguments advanced on behalf of the parties and the facts mentioned in the petition and in the reply, the application and other annexed documents are perused.

11. On a close scrutiny, it appears that the Petitioner and the Respondent are legally wedded wife and husband and their marriage was solemnized on 02.02.2003 at Jabalpur Church. Out of their wedlock, a male child was born on 11.07.2004 who is presently in the custody of the Petitioner. The Petitioner is a Staff Nurse in SECL. On the other hand, the Respondent is working as a Sports Teacher in a private institution. Earlier the Respondent had filed an application under Section 32 of the Act of 1869 which was dismissed vide judgment dated 01.02.2014 and thereafter, the Petitioner had filed the aforementioned civil suit which is pending before the Family Court, Raigarh, Chhattisgarh. As the Petitioner is employed in a Government undertaking, it seems that there is no financial problem for her to appear in the matter before the Court at a different station.

12. From perusal of the documents, it shows that the Petitioner had filed a miscellaneous application under Section 12 of the Act of 2005 on 29.4.2011 before the JMFC, Umariya (M.P.). After hearing, the Judicial Magistrate had passed an order on 13.2.2014 with certain directions. Thereafter, the Petitioner had filed an appeal against the order passed by the Judicial Magistrate for enhancement of the maintenance which is pending before the Sessions Judge, Umariya (M.P.). It shows that the Petitioner is taking part for prosecution of her miscellaneous case also for the appeal. Raigarh is at a short distance from Korba as compared to the distance from Korba to Umariya.

13. From perusal of the order-sheets, it does not appear that the Petitioner had filed any application to represent her under the authority of Section 13 of the Family Courts Act, 1984 assisted by a legal expert as Amicus Curiae, which she is very well aware of. No reason has been assigned as to why the Petitioner did not pray before the Court below for assistance by an Amicus Curiae.

14. Upon consideration of the entire facts, it reveals that the Petitioner has failed to demonstrate any reasonable cause for transfer of the matter from Raigarh to Korba.

15. Consequently, on consideration of the entire facts, the transfer petition filed by the Petitioner is liable to be dismissed. Hence, it is dismissed and it is ordered that the Court below is directed to expedite the matter and dispose of the same as early as possible preferably within six months from the date of receipt and/or production of a copy of this order. Parties are directed to cooperate with the proceedings of the Court below for speedy disposal. The Petitioner may file a certified copy of the present order before the Court below for its compliance.

16. Registry is directed to send a copy of the order to the Judge, Family Court, Raigarh for its compliance.

17. Consequently, the transfer petition (civil) is dismissed.

18. Certified copy of the order as per rules.

Sd/-

Chandra Bhushan Bajpai
Judge