

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (C) No.77 of 2016**

- Smt. Reshma @ Drishti Ahuja W/o Nirmal Ahuja, Aged About 27 Years R/o Baniyapara, Dhamtari, Civil & Revenue District Dhamtari, Chhattisgarh

---- Petitioner

Versus

- Nirmal Ahuja S/o Late Ashok Kumar Ahuja, Aged About 30 Years R/o Pratapganj Para, Jagdalpur, Civil & Revenue District Jagdalpur, Chhattisgarh

---- Respondent

For petitioner	: Shri Adil Minhaj, Advocate
For respondent	: Shri Shivendu Pandya, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment On Board****24.01.2017**

By this order, transfer petition filed by the petitioner seeking transfer of Civil Suit No.61A/16 (Nirmal Ahuja vs. Smt. Reshma @ Drishti Ahuja) filed under Section 9 of the Hindu Marriage Act, 1955 pending before Judge Family Court Jagdalpur (Bastar) to the Court of Judge Family Court, Dhamtari is being disposed.

2. As per the facts of the transfer petition in brief, the petitioner and the respondent got married on 31.12.2013 at Dhamtari and they are blessed with a male child, presently aged about 6 years. On account of dispute, the petitioner is residing with her age old parents, her father is running a tea stall in the bus stand, Dhamtari. The petitioner is not doing any job and depend upon

her father. The petitioner has filed MJC No.67/16 under Section 125 of the Cr.P.C. against the respondent which is pending before Judge Family Court, Dhamtari. The petitioner has also filed an application under the provisions of Section 12 of the Protection Women from Domestic Violence Act, 2005, which is registered as Criminal Case No.463/16, before Judicial Magistrate First Class, Dhamtari. The petitioner has to take care of her two year old son and it is very difficult for her to travel upto Jagdalpur with her infant child, she has no independent source of income and as two other connected matters are pending at Dhamtari, it would be appropriate to transfer the said civil suit 61A/16 from the Court of Judge Family Court, Bastar at Jagdalpur to Judge Family Court, Dhamtari.

3. On behalf of the respondent, written submission was filed. Admitting the pendency of both the matters as aforementioned in the Dhamtari Court and also with the fact that respondent has filed the aforementioned civil suit under Section 9 of the Hindu Marriage Act, it is submitted that the ground taken by the petitioner is not relevant. She can easily attend the proceedings before the Family Court, Jagdalpur, Bastar, as there is regular travelling conveyance available to the petitioner and the distance is merely about 200 km. Also taken the ground that the petitioner is having brother and sister who can come with the petitioner to attend the hearing at Jagdalpur. The economic conditions of the petitioner is very sound. She is capable to attend the hearing at

Jagdalpur. Hence, it is submitted that the said Transfer Petition may be dismissed as being devoid of merits.

4. Heard learned counsel for the parties and perused the matter.

5. Learned counsel for the petitioner duly supported the grounds taken in the petition and submits that for the aforementioned reasons the matter may be transferred from Jagdalpur to Dhamtari.

6. In reply, learned counsel for the respondent opposing the arguments advanced on behalf of the petitioner submits that even after receipt of notice, the petitioner never attended the hearing at Jagdalpur Family Court and instead she has filed the instant Transfer Petition. Hence, the petition may be dismissed as devoid of merits.

7. To consider the arguments advanced on behalf of the parties, I have perused the material available.

8. A minute examination of the entire matter, it appears that this is an admitted fact that both are married on 31.12.2013 and aforementioned two cases are pending before Dhamtari Court, one matter is pending before Jagdalpur Court against which the petitioner is here under the relevant provisions of Section 24 of the CPC. It is also apparent that prima facie the matter under Section 125 Cr.P.C. may be filed by the petitioner prior to the filing of Civil Suit by the respondent under Section 9 of the Hindu

Marriage Act. Out of the wedlock, they have a 2 years male child who is presently in the custody of the petitioner.

9. On consideration of the fact that 2 other connected matters are also pending before the Dhamtari Court, with this, as the petitioner is not doing any profession or earning for her livelihood, she is taking care of 2 years child, it would be appropriate to allow the Transfer Petition and transfer the matter as prayed for.

10. Consequently, the instant Transfer Petition is allowed. It is directed that Civil Suit No. 61A/2016 (Nirmal Ahuja vs. Smt. Reshma @ Drishti Ahuja) pending before the Judge Family Court, Bastar at Jagdalpur under Section 9 of the Hindu Marriage Act be withdrawn and transferred to the Family Court, Dhamtari for trial and final disposal in accordance with law. The Family Court Bastar at Jagdalpur is hereby directed to transfer immediately the concerned records to the concerned court for further proceedings. No order as cost.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE