

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (Civil) No.6 of 2016**

Smt. Madhvi Singh W/o Shri Rakesh Singh Thakur, Aged about 26 years Through Smt.Ranjani Singh, W/o Shri Karan Singh, Phase,2, Quarter No.11, Abhishek Bihaar (Mangla), P.S. Bilaspur Distt.Bilaspur (CG)

---- Petitioner

Versus

Rakesh Singh Thakur, S/o Shri Jagdishwar Singh, Aged about 38 years, R/o Balaji Marg, Raja Para Kanker P.S. Kanker, North Bastar Distt.Kanker (CG)

---- Respondents

For Petitioner	:	Mr.Vikash Shrivastava, Advocate
For Respondent	:	Mr.Aman Kesharwani, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

15/02/2017

1. Marriage of the petitioner herein (wife) was solemnized with the respondent (husband) on 29.5.2010. After few years, relationship between them become strained leading to filing of the petition for grant of divorce under Section 12 of the Hindu Marriage Act, 1955 (hereinafter called as 'Act of 1955') by the respondent/husband on 8.7.2015 before Family Court, North Baster Kanker. Thereafter, the petitioner/wife filed an application under Section 9 of the Act of 1955 for restitution of conjugal rights at Family Court, Bilaspur on 23.12.2015 stating inter-alia that the respondent/husband without reasonable cause withdrawn her from the society. Thereafter, the petitioner/wife also

filed an application for proper direction on 7.10.2015 for domestic violence under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called as 'Act of 2005') and also filed an application under Section 125 of the CrPC for grant of maintenance on 2.5.2016 before Family Court, Bilaspur. Thus, petition for grant of divorce firstly filed by the respondent/husband is pending consideration at Family Court, North Bastar Kanker, whereas petitioner's/wife's applications for restitution of conjugal rights filed subsequently and proceeding for grant of maintenance and application under the Act of 2005 are pending consideration at Family Court, Bilaspur.

2. Now, the petitioner/wife has filed an application under Section 24 of the CPC for transfer of Civil Suit No.22A/2015 pending before Family Court, North Bastar Kanker to Family Court, Bilaspur on the ground that she is woman having no source of income leaving separately at Bilaspur and it is absolutely inconvenient for her to attend each and every date of hearing at Family Court, North Bastar Kanker and therefore, proceedings pending before Family Court, North Bastar Kanker be transferred to Family Court, Bilaspur for hearing and disposal in accordance with law.
3. Reply has been filed by the respondent/husband to the said application opposing the said application.

4. Mr.Vikash Shrivastava, learned counsel appearing for the petitioner, would submit that the petitioner/wife being all alone and no separate and independent source of earning and to undertake journey from Bilaspur to Kanker on each and every date of hearing and further the advocates are not allowed in the Family Court proceedings and also taking into consideration the balance of convenience, proceeding for grant of divorce pending before Family Court, North Bastar Kanker be transferred for hearing and disposal to Family Court, Bilaspur where the petitioner's application for restitution of conjugal rights and application for grant of maintenance are pending and the application deserves to be allowed.
5. Mr.Aman Kesharwani, learned counsel appearing for the respondent/husband, would submit that the respondent/husband has firstly filed an application for grant of divorce before Family Court, North Bastar Kanker on 8.7.2015 and application for restitution of conjugal rights was filed by the petitioner/wife on 23.12.2015 at Family Court, Bilaspur, therefore, by virtue of the provisions contained in Section 21A of the Act of 1955, proceedings pending before Family Court, Bilaspur has to be transferred to Family Court, North Bastar Kanker for hearing and disposal in accordance with law. He would further submit that merely because the petitioner is woman no favour

should be shown to her as the respondent/husband is serving in naxalite area being police constable and it is difficult for him to get leave from duty which he supposed to perform, therefore, the transfer petition deserves to be dismissed.

6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the record carefully and critically.
7. At the outset, I would like to consider the objection raised by learned counsel appearing for the respondent/husband that by virtue of the provisions contained in Section 21A (2) (a) and (b) of the Act of 1955, later petition filed by the petitioner/wife has to be transferred to Family Court where earlier petition was presented.
8. At this stage, it would be appropriate to notice Section 21A of the Act of 1955, which reads as under:-

“21A. Power to transfer petitions in certain cases.-(1) Where-

(a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground,

whether in the same District Court or in a different District Court, in the same State or in a different State, the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub section (1) applies

(a) If the petitions are presented to the same District Court, both the petitions shall be tried and heard together by that District Court.

(b) if the petitions are presented to different District Courts, the petition presented later shall be transferred to the District Courts in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the District Court in which the earlier petition was presented.

(3) In a case where clauses (b) of sub section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the District Court in which the later petition has been presented to the District Court in which the earlier petition is pending shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

Section 24 of the CPC reads as under:-

“24. General power of transfer and withdrawal— (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section,—

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it. "

9. A careful perusal of Section 21A (2) (a) and (b) of the Act of 1955, which is applicable when two separate petitions/judicial proceedings have been filed one after the other in two different places. Section 21A deals with a specific circumstances when two petitions have been filed at two different places, either within the same district, or two different districts. Since the provision deals with a specific circumstance, it does not control other conditions/circumstances under which a transfer application may be moved. No doubt, in Section 21A of the Act of 1955, the law makers have not included proceedings under Section 9 of the Act of 1955. Section 21A deals with

proceedings preferred under Sections 10 and 13 of the Act of 1955.

10. Now the first question would be whether one petition filed by the respondent/husband for divorce and other petition filed by the petitioner/wife for restitution of conjugal rights are required to be consolidated and tried by one Court anomalously ?
11. The first question that one application filed by the husband for grant of divorce and second application filed by wife for restitution of conjugal rights required to be consolidated and tried in one Court is no longer res-integra. In the matter of **Guda Vijayalakshmi Vs. Guda Ramachandra Sekhara Sastry**¹, the Supreme Court has clearly held that petition for grant of divorce and petition for restitution of conjugal rights both should be heard together to avoid conflicting decisions being rendered by two different Courts and Section 21A covers the cases filed under Section of Act. Thus, by operation of Section 21 of the Act of 1955, the subsequent petition must be transferred. It was held as under:-

“5..... Such a view, in our opinion, is not correct. As stated earlier, in the matter of transfer of petitions for a consolidated hearing thereof s. 21A cannot be regarded as exhaustive for the marginal note clearly

¹ AIR 1981 SC 1143

suggests that the section deals with power to transfer petitions and direct their joint and consolidated trial "in certain cases." Moreover, it will invariably be expedient to have a joint or consolidated hearing or trial by one and the same Court of a husband's petition for restitution of conjugal rights on ground that the wife has withdrawn from his society without reasonable excuse under Section 9 of the Act and the wife's petition for judicial separation against her husband on ground of cruelty under Section 10 of the Act in order to avoid conflicting decisions being rendered by two different Courts. In such a situation resort will have to be had to the powers under Sections 23 to 25 of the Civil Procedure Code for directing transfer of the petitions for a consolidated hearing. Reading Section 21A in the manner done by the Nagpur Bench which leads to anomalous results has to be avoided."

12. Thus, in view of the aforesaid judgment, consolidation of both the petitions for joint and analogous hearing i.e. one filed by petitioner/wife for restitution of conjugal rights and other filed by the respondent/husband is necessary in order to avoid conflicting decrees being rendered by two different courts.
13. The question for consideration would be whether power and jurisdiction under Section 24 of the CPC can be exercised in cases in which Section 21A of the Act of 1955 is applicable ?
14. The Supreme Court in the matter of **Guda Vijayalakshmi** (supra) while dealing with the power of transfer under Section 25 of the CPC has clearly held that Section 21A of

the Act of 1955 is not exhaustive. It was observed as under:-

“4. So far as Section 21A of the Hindu Marriage Act is concerned the marginal note of that section itself makes it clear that it deals with power to transfer petitions and direct their joint or consolidated trial “ in certain cases.”

Further, it was held as under:-

“It is therefore, difficult to accept the contention that Section 21A of Hindu Marriage Act excludes the power of transfer conferred upon this Court by the present Section 25 of C.P.C. in relation to proceedings under that Act.”

15. A Division Bench of Bombay High Court in **Sanjeev Indravadan Dani Vs. Mrs. Rupal Sanjeev Soni**² noticing **Guda Vijayalakshmi** (supra) opined that the Supreme Court has interpreted the purport of section 22-A to mean that it cannot be regarded as exhaustive; for the marginal note clearly suggests that the section deals with power to transfer petitions and direct their joint and consolidated trial “in certain cases”.
16. Thus, there is no iota of doubts that Section 21A of the Act of 1955 does not exclude the power of this Court under Section 24 of the CPC to transfer or withdraw the suit under Section 24 of the CPC. Now, the question would be whether the petitioner has made out a case for transfer of her proceedings from Family Court, North Baster Kanker to

² (2010) 1 Bom CR 226

Family Court, Bilaspur.

17. Section 24 is a self-contained code and comprises substantive as well as procedural law allowing a party to move the court by an application and also empowers the court to make an order of transfer of a case from one district to other. Section 23 is merely a procedural provision and not a substantive one vesting power in a particular court to order transfer of case (See **Durgesh Sharma Vs. Jayshree**³).
18. It is well settled that in deciding the application under Section 24 of the CPC, balance of convenience or inconvenience to plaintiff or defendant or witnesses and reasonable apprehension in mind of litigant that he may not get justice in the court in which suit is pending is required to be considered (See **DAV Boys Senior Secondary School Vs. DAV College Managing Committee**⁴.)
19. It is also well settled that in deciding the petition for transfer of matrimonial proceedings, convenience of woman is the prime consideration (See **Rajani Kishore Pardeshi Vs. Kishor Babulal Pardeshi**⁵), but at the same time, the Supreme Court also indicated that leniency

3 (2008) 12 SCC 237

4 (2010) 8 SCC 401

5 (2005) 12 SCC 237

to ladies shown by court in such transfer matters often misused and taken advantage of by women. So court is now required to consider each petition on its merit (See **Anindita Das Vs. Srijit Das**⁶.)

20. After having noticed the judgments of the Supreme Court governing the principles relating to transfer of the petitions, coming back to the facts of the present case, it is quite apparent that the petitioner is woman and she is staying at Bilaspur and according to her, she has no independent source of earning and her parents are also staying in the State of Kerala. She has no any male member to support her and even to accompany her to attend Family Court, North Bastar Kanker for contesting the proceedings filed by the respondent/husband for grant of divorce, whereas the respondent/husband is government servant working as Constable. Likewise, three proceedings i.e. one is for restitution of conjugal rights filed by the petitioner, second is the petition under the provisions of the Act of 2005 and third one is application for maintenance, all three are pending at Family Court, Bilaspur, therefore, in my considered opinion that proceeding for grant of divorce and proceeding for restitution of conjugal rights both proceedings are required to be heard analogously, therefore, it is directed that

6 (2006) 9 SCC 197

proceedings pending before Family Court, North Bastar Kanker (Rakesh Singh Thakur Vs. Smt. Madhvi Singh) in Civil Suit No.22-A/2015 be transferred to Family Court, Bilaspur. Both the proceedings shall be consolidated and be tried jointly and disposed of expeditiously by Family Court, Bilaspur in accordance with law.

21. The transfer petition is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-