

HIGH COURT OF CHHATTISGARH, BILASPUR**TPC No. 73 of 2018**

Smt. Anima @ Chetana Dewangan W/o Shri Jitendra Dewangan
Aged About 30 Years R/o C/o An Singh Dewangan Village & Police
Station Devari Bangla Tahsil Daundi Lohara District Balod
Chhattisgarh. --- **Petitioner**

Versus

Shri Jitendra Kumar Dewangan S/o Jivan Lal Dewangan Aged About
34 Years R/o Annapurna Para Police Station & Tahsil Kanker district
North Bastar Kanker Chhattisgarh. --- **Respondent**

For the applicant	:	Mr. Amiyakant Tiwari, Advocate.
For the Respondent	:	Mr. Pravin Tulsyan, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

06.12.2018

1. The present petition is by the wife for transfer of divorce petition bearing No.13-A/2018 filed by the husband at Family Court, Kanker, Distt. Uttar Bastar.
2. Initially, the husband has filed an application under section 9 for restitution of conjugal rights at family Court north Bastar, Kanker. Subsequently the wife has filed TPC No.46/2016 and this Court by order dated 02.09.2016 has transferred the application for restitution of conjugal rights from north Bastar, Kanker to Family Court, Durg on the ground that no maintenance was being granted to the wife and child. It is contended that after transfer order was filed the respondent/ husband got the restitution application dismissed and preferred fresh petition seeking divorce before the Family Court Kanker North Bastar under Section 13(1)(A) of the Hindu Marriage Act and the circumstances which were prevailing at the time when the transfer of restitution case

was filed, the same exists even today. Therefore, the present petition i.e., Civil Case No.13-A/2018 for divorce may be transferred to Family Court Durg.

3. On the other hand, learned counsel for the respondent vehemently opposes the prayer and submits that it is right of the respondent to prefer the case as the two cases i.e., restitution of conjugal rights and the divorce are two different issues and there is no reason exists to transfer the case to family Court, Durg.
4. Perused the records and the documents connected therewith. The petition contains the order dated 02.09.2016 passed in TPC No. 46 of 2016 which was preferred by the wife. Considering the fact that the maintenance granted to the wife having not been paid, the application for restitution of conjugal rights was directed to be transferred to the family Court, Durg. Thereafter, as appears, again an application for divorce was preferred before the Family Court, Kanker North Bastar and still the wife is not being paid amount of maintenance. Therefore it appears that the circumstances which were prevailing as on 02.09.2016 still exists even today and in such facts situation of the case, the convenience of the wife has to be considered.
5. It is directed that the Civil Suit No.13-A/2018 which is pending before the Family Court Kanker, North Bastar shall stand transferred to Family Court, Durg. The parties shall appear before the Family Court Durg on 17.01.2019.

Sd/-
GOUTAM BHADURI
JUDGE