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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TR.P.(C.) 20/2018**

PRIYANKA SHARMA

..... Petitioner

Through: Mr. R.K. Joshi, Advocate with petitioner
in person

versus

AMIT SHARMA

..... Respondent

Through: Mr. Sudershan Roy, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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08.02.2018

The matter has come up invoking the jurisdiction of this Court under Section 24 of the Code of Civil Procedure, 1908 upon reference being made by Ms. Pinki, Judge, Family Court for North District at Rohini by proceedings recorded by her on 25.01.2018. The case relates to a petition (HMA 237/2017) presented seeking annulment of the marriage of the parties in terms of Section 12(1)(a) of Hindu Marriage Act, 1956.

The proceedings recorded by the concerned Judge on the file earlier on 13.12.2017 reveal that she had expressed personal reasons for recusal. She made over the file of the case to the Principal Judge (HQ), Family Court, Dwarka, Delhi with a request for it to be transferred to some other court of competent jurisdiction. The Principal Judge (HQ) is the Principal Judge, Family Court for South West District. By proceedings recorded

on 20.01.2018, he returned the file to the Judge, Family Court for North District at Rohini observing that he did not have the power of transfer referring in this context to a circular issued by this court vide no.5325/DHC/Gaz./G-1/2017 dated 07.11.2017.

The Judge, Family Court for North District, upon return of the file has made over the case to this court for “further orders”.

The Family Courts Act, 1984 whereunder the Family Courts are established conceives of appointment of more than one Judge of Family Court for a particular area and, *inter alia*, provides by sub-Section (2) of Section 4 as under :-

“(2) When a Family Court consists of more than one Judge, -

(a) each of the Judges may exercise all or any of the powers conferred on the court by this Act or any other law for the time being in force;

(b) the State Government may, with the concurrence of the High Court, appoint any of the Judges to be the Principal Judge and any other Judge to be the Additional Principal Judge;

(c) the Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof;

(d) the Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness or any other cause.”

(emphasis supplied)

There seems to be no provision other than the one quoted above to

govern the procedure to be followed in case there is a request to be made for transfer of a case pending before one Family Court to the other. Section 10(1) declares, *inter alia*, that subject to the provision of the Family Courts Act and the rules framed thereunder and the provisions of the Code of Civil Procedure, 1908, a Family Court “*shall be deemed to be a civil court and shall have all the powers of such court*”. Sub-section (3) of Section 10 further clarifies, though in different context, that nothing in the said law shall prevent a Family Court from “*laying down its own procedure*”. The special law confers powers on this court, as indeed on the Central Government and State Government, to make rules in terms of Section 21, 22 and 23.

The learned counsel present submit that till date no rules exist on the subject of inter-district or intra-district transfer of the cases pertaining to the Family Courts in Delhi.

Against the above backdrop, assistance was sought from the Registry. In response, Mr. Naresh Chand Garg, Joint Registrar (Gaz). has appeared in the court and has brought to its notice that earlier the Administrative and General Supervision Committee of this court, by its resolution dated 28.09.2015, had authorised the Principal Judge (HQ), Family Courts, Dwarka to consider the requests for transfer of the cases from the Family Court Judges on their recusal to hear the case and to assign the same to another Family Court in the same district or in the nearest district, as he / she deems fit. The said resolution, however, was recalled by another resolution of the Administrative and General Supervision Committee held on 16.10.2017, it being in the following terms :-

“...Therefore, henceforth the request received from District and Sessions Judges and Principal Judges, Family Court for transfer of case from one District to another District, subordinate to the High Court and competent to try or dispose of the same, upon recusal or for any other reason, shall be placed by the Registry by way of reference before the concerned Bench for appropriate consideration and orders. The same be done for the items No.2 and 3.”

(emphasis supplied)

It may be mentioned here that the above resolution was adopted upon references being received from District & Sessions Judges for South -East and South District at Saket Courts Complex in the context of matters pertaining to the appeals under the Delhi Municipal Corporation Act, 1957 and Delhi Rent Control Act, 1958.

The Joint Registrar (Gaz). on being asked informs this court that Ms. Swaran Kanta Sharma is posted as the Principal Judge for North District at Rohini and that Ms. Pinki, Judge, Family Court (North) is the additional Judge in the same district. There is no clarity as to why the Additional Judge did not place the case before the Principal Judge of Family Court of the same district and instead, sent it to Principal Judge of Family Court of another district.

In the view of this court, the provision contained in Section 4(2)(c) confers sufficient power and jurisdiction on the Principal Judge to make all necessary arrangements for distribution of the business of the court amongst various Judges of the Family Court for the same district. From this, it can be inferred that the Principal Judge would also have the power and jurisdiction to entertain the request for re-allocation of the case upon recusal expressed

by an additional Judge. This would entail not an inter-district but intra-district transfer of the matter. For intra-district transfer, the matter need not come to this court in terms of the resolution dated 16.10.2017 of the Administrative and General Supervision Committee. But then, for this administrative directions may need to be issued for removal of doubts or to bring clarity, after due deliberation by the Administrative and General Supervision Committee, - if necessary, by exercising the power to make rules.

In the aforementioned facts and circumstances, the case at hand is withdrawn from the court of Ms. Pinki, Judge, Family Court for North District at Rohini and made over for further proceedings in accordance with law to the court of Ms. Swaran Kanta Sharma, the Principal Judge for North District at Rohini. The case having been transferred in terms of the above directions, the parties are directed to appear before the Principal Judge, Family Court for North District at Rohini on 05.03.2018.

It is directed that a copy of this order shall be placed before Hon'ble the Acting Chief Justice for such consideration and directions as may be deemed proper on the administrative side.

R.K.GAUBA, J

FEBRUARY 08, 2018

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