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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TR.P.(C.) 189/2018**

BALJIT KAUR JAIN

..... Petitioner

Through: Ms. Suruchi Suri, Advocate.

versus

AJAY KUMAR JAIN

..... Respondent

Through: Mr. Rajiv Ranjan Dwivedi & Mr.
Jitendra Tripathi, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **08.10.2018**

CM APPL. 41847/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

TR.P.(C.) 189/2018

Vide the present petition, the petitioner seeks the transfer of proceedings in CS No.9684/16 pending before the learned ADJ-04, South East, Saket to the appropriate Family Court in the South East District and seeking directions for passing of an order in the matter after hearing both the parties expeditiously or in the alternative seeking vesting of the powers in the Court of the learned ADJ-04, South East, Saket to pass an order in CS No.9684/16 presently pending before the said learned Court.

A perusal of the proceedings dated 01.09.2018 before the learned ADJ-04, South East and the proceedings dated 10.09.2018 in the said matter before the learned District & Sessions Judge, South East, Saket indicate that the prayers made in CS No.9684/16 are to the effect:-

“A. That an order be issued regarding maintenance to the plaintiff at the rate of Rs.50,000/- per month with a declaration that the plaintiff has a right to reside in her matrimonial home and restraining the defendant or his agents from dispossessing the plaintiffs from the matrimonial and residential home situated on the first floor, D-291, Defence Colony, New Delhi.

B. A provision to be made in the decree for periodical increase in the maintenance amount to be awarded to the plaintiff.

C. Issue an order of Injunction restraining the defendant from entering the portion in occupation of the plaintiff.

D. That an order be issued restraining the defendant from selling off the matrimonial home or in any way alienating or creating any third party right, title or interest in the property by disposing or encumbering property situated at D-291, First Floor, Defence Colony, New Delhi.

E. An order restraining the defendant from causing any

physical harassment or injury to the plaintiffs herein.

F. Issue a decree and order creating a charge on the first floor of the property at D-291, First Floor, Defence Colony, New Delhi to satisfy the right to maintain and the right to reside in the First Floor of the matrimonial home at D-291, Defence Colony, New Delhi.

G. Pass any other order that his Hon'ble Court may deem fit and proper in the facts and circumstances of the case",

which had been made in the suit dated 28.05.2002 before this Court which had thereafter been transfer to the District Court in view of enhancement of pecuniary jurisdiction of the District Court, and in terms of the Section 7 & 8 of the Family Courts Act, which read to the effect:-

“7. Jurisdiction (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation: The suits and proceedings referred to in this

sub-section are suits and proceedings of the following nature, namely,-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

8. Exclusion of jurisdiction and pending proceedings-

Where a Family Court has been established for any area,-

(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),-

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.”

,it is apparent that proceedings in the said suit have essentially to be adjudicated by the Family Court.

In the circumstances, the proceedings in CS No.9684/16 pending before the learned ADJ-04, South East, Saket are withdrawn from the said learned Court and assigned to the present incumbent of the Court of the Additional Family Court, Judge, South East Saket

before whom the records of the said proceedings be placed on the date 01.11.2018 at 2.30 PM with directions to proceed further from the stage at which the proceedings are now pending.

The petition is disposed of accordingly.

ANU MALHOTRA, J

OCTOBER 08, 2018/NC