

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****TPC No. 40 of 2019**

- Dr. Deepti Choudhry W/o Dr. Satyam Patel Aged About 30 Years D/o Khasi Ram Choudhry, C/o Dhani Ram Choudhry (Choudhry Coaching Centre Daganiya, Near Radha Krishna Mandir, Raipur Chhattisgarh, Present Address- Deepti Choudhry D/o Kashi Ram Choudhry , Shri Shankarcharya Institute Of Medical College, Junwani, Bhilai, District Durg Chhattisgarh

---- Applicant**Versus**

- Dr. Stayam Patel S/o Nagsingh Patel Aged About 35 Years Occupation- Service, R/o Medical College, Staff Quarter, Raigarh, Tahsil And District Raigarh Chhattisgarh

---- Non-applicant

For Applicant	: Mr. A.K. Prasad, Adv.
For Non-applicant	: Mr. Sanjay Agrawal, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORDER ON BOARD****12.12.2019**

1. Matter heard finally.
2. Applicant has preferred this TPC under Section 24 of the Civil Procedure Code (in short 'CPC') for transfer of Civil Suit No. 215A/2018 pending before the Family Court, Raigarh (CG) (Dr. Satyam Patel -v- Dr. Deepti Choudhry) to the Principal Judge Family Court, Durg.
3. In brief, the applicant's case is that she is legally wedded wife of non-applicant. Now she is residing at Junwani, Bhilai, District Durg, whereas he is resident of District Raigarh. He has filed an application under Section 13 of the Hindu Marriage Act, 1956 against her before the Family Court Raigarh, which was registered as Civil Suit No.215-A/2018. Subsequently, she has also filed an application under Section 125 of the Criminal Procedure Code, which is pending before Principal Judge, Family Court, Raipur. She is a lady doctor and taking the coaching for preparation of Master Degree at Bhilai. No one with her to assist to go Raigarh to attend the said case. The distance between from Raigarh to Bhilai is about 250

KM. She is having no means of her livelihood.

4. In brief, non-applicant's case is that the coaching period of applicant is not definite. He works in Medical College on ad hoc basis if the case is transferred, then he will face problems.

5. Counsel for the applicant drew my attention on Annexure P-1 the photocopy of application of divorce filed by non applicant, wherein he has shown the present address of her as Junwani, Bhilai.

6. Counsel for the non-applicant argued that he has already filed the affidavits of the witnesses before the Family Court Raigarh. He is ready to bear travelling expenses of her. He drew my attention on copy of the application filed under Section 125 CrPC vide Annexure P-2, wherein her address has been given as Raipur.

7. Counsel for the applicant placed reliance on the decision of Hon'ble Supreme Court in the matter of **Preeti Sharma -v- Manjeet Sharma** [(2005) 11 SCC 535] para 2 of which is relevant and is quoted below :-

2. The grounds made out are that the petitioner is an unemployed lady and totally dependent on her uncle and that she will be hard-pressed to defend the suit at Muzaffar Nagar. It is also claimed that there is a petition for restitution of conjugal rights and certain other proceedings pending in Delhi. In our view, no substantial ground for transfer has been made out. If the petitioner wishes that all cases be tried at one place, she may apply for the same and we will transfer the cases pending in Delhi to Muzaffar Nagar. Merely because the petitioner is a lady does not mean she cannot travel to Muzaffar Nagar. At the highest she can be paid expenses for travel and stay. We, therefore, direct that the respondent shall pay to the petitioner and a companion travel and stay expenses on every occasion that the petitioner is required to go to Muzaffar Nagar. The Court at Muzaffar Nagar shall ensure that such payment is made to the petitioner on every occasion. With these directions, the transfer petitions are dismissed."

8. Counsel for the applicant further placed reliance on the decision of Hon'ble Supreme Court in the matter of **Rajani Kishor Pardeshi -v- Kishore Babulal Pardeshi** [(2005) 12 SCC 237] wherein it has been held that the convenience of wife is to be preferred over the convenience of the husband.

9. Counsel for the non applicant placed reliance on the order of this Court in the matter of **Smt. Aanchal @ Kuljeet Kaur Ajmani V. Amit**

Ajmani dated 13.11.2019 passed in TPC No.54 of 2019, further he placed reliance on the order of this Court in the matter of **Smt. Preeti chandra Vs. Pradeep Kumar Chandra** dated 07.11.2019 passed in TPC No.44 of 2019.

10. Counsel for the non-applicant further placed reliance on the decision of Hon'ble Supreme Court in the matter of **Anindita Das -v- Srijit Das** [(2006) 9 SCC 197] para 3 of which is relevant and quoted below :-

3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by this Court. On an average at least 10 to 15 transfer petitions are on board of each court on each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.

11. Counsel for the non-applicant further placed reliance on the decision of Hon'ble Supreme Court in the matter of **Usha Jeorge -v- Koshy George** [(2000) 10 SCC 95] para 2 of which is relevant and quoted below :-

“2. In view of the fact that the Family Court at Secunderabad is already seized of the matter since long and we are told that 11 sittings are over, in our view, this is not the proper stage to transfer the proceedings from the Family Court, Secunderabad to any other court. However, we direct the Family Court at Secunderabad to see that the proceedings are put to an end at the earliest and preferably within three months from today. In the meantime the presence of the minor child at Secunderabad is dispensed with subject to any further orders of the Family Court if the Court feels his presence necessary.”

12. In the matter of **Anindita Das** (Supra) Hon'ble Supreme Court has observed in Para No. 2 which reads as under:-

(2) In support of this petition, a large number of authorities have been cited, namely, *Reena Bahri v. Ajay Bahri* [(2002) 10 SCC 136] , *Leena Mukherjee v. Rabi Shankar Mukherjee* [(2002) 10 SCC 480] , *Ram Gulam Pandit v. Umesh J. Prasad* [(2002) 10 SCC 551] and *Rajwinder Kaur v. Balwinder Singh* [(2003) 11 SCC 726] . These authorities are all based on the facts of their respective cases. They do not lay down any particular law which operates as a precedent.

13. Looking to the facts and circumstances of the case and on the basis of Annexure P-1 this Court finds that now applicant is residing at Junwani Bhilai, District Durg.

14. There is no material available on record on strength of which it can be

said that any other person residing with applicant along with whom, she can go to Raigarh from Bhilai to attend the Court proceedings.

15. From Bhilai to Raigarh train distance is 270 KM and road distance is 284 KM.

16. In the case in hand the evidence is going to start. It cannot be said that the substantial evidence has already been recorded.

17. Bearing travelling expenses by non applicant cannot reduce the problems which applicant would face while travelling from Bhilai to Raigarh and vice versa.

18. In the matter of **Smt. Aanchal @ Kuljeet Kaur Ajmani** (Supra) Family Court, Rajnandgaon had appointed the father of the applicant as her guardian giving finding that he would appear and prosecute the case on her behalf. In the matter of **Smt. Preeti chandra** (Supra) child of applicant and non applicant was suffering from 90% disability of the locomotion and he was residing along with the non applicant.

19. In the case in hand applicant is a woman and it would be hardship for her to go to Raigarh from Bhilai and vice versa to defend the case.

20. Looking to the above mentioned facts and circumstances of the case this Court finds that aforesaid observation made by Hon'ble Supreme Court in the matters of **Preeti Sharma** (Supra) and **Rajani Kishore Pardeshi** (Supra) are applicable in favour of applicant and non applicant does not get any help from the Annexure P-2, aforesaid order of this Court passed in the matters of **Smt. Aanchal @ Kuljeet Kaur Ajmani** (Supra) and **Smt. Preeti Chandra** (Supra) and aforesaid observation made by Hon'ble Supreme Court in the matter of **Aandita Das** (Supra).

21. Considering the above mentioned facts and circumstances of the case, this Court finds that the balance of convenience lies in favour of applicant.

22. Consequently, the instant transfer petition is allowed. It is ordered that the Civil Suit No.215-A/2018 pending before Family Court, Raigarh be transferred to Principal Judge, Family Court, Durg for its trial/disposal in accordance with law. The Family Court, Raigarh is directed to transmit the record of the above case to the Principal Judge, Family Court, Durg.

23. The Principal Judge, Family Court, Durg is directed to expedite the

proceedings and dispose of the case as soon as possible in accordance with law. He is also directed to submit the progress report in every two months from the date of receipt of copy of this order.

24. Registrar (Judicial) is directed to send the copy of this order to the Principal Judge, Family Court, Durg, immediately.

25. In view of above, I.A.No.1/2019 also stands disposed of.

26. No order as to costs.

Sd/-
(Sharad Kumar Gupta)
Judge