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

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Date of Order: 06.02.2019

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Tr. P. (C) No.231/2018

MALA SINGH CHAWLA

..... Petitioner

Through: Ms. Malavika Rajkotia, Ms. Arpita
Rai, Ms. Rytim Vohra & Mr.Aashman
Talwar, Advocates.

Versus

RAHUL CHAWLA

....Respondent

Through: Ms. Geeta Luthra, Sr. Advocate with
Mr. Pranav Vashishtha & Ms. Dolly
Warikoo, Advocates.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

C.M. No.5836/2019 (for exemption)

Allowed, subject to all just exceptions.

The application is disposed of.

Tr. P. (C) No.231/2018 & C.M. No.5835/2019 (for stay of the proceedings)

1. The petitioner seeks transfer of her divorce petition being HMA No.957/2018 and another guardianship petition filed by her husband/respondent being GP No.21/2018 from the court of Ms.Madhu Jain, learned Family Judge, South-East District, Saket

Courts, New Delhi to the learned Principal Judge, Family Court, South District, New Delhi.

2. On 21.12.2018, this court had issued notice to the respondent for 18.02.2019. The file is taken up today as the petitioner seeks stay of the proceedings before the trial court.

3. With the consent of the learned counsel for the petitioner and the learned senior counsel for the respondent, I propose to hear and decide the transfer petition.

4. Learned counsel for the petitioner submits that on 23.10.2018, the learned trial judge expressed her desire not to try the case for some personal reasons and directed both the parties to appear before the learned Principal Judge, South-East District, Saket Courts, New Delhi, on that day at 3 pm. She states that when the learned Principal Judge took up the matter, he wrongly recorded that both the counsel for the parties made statement that they have complete faith in the court and the case should be tried by the same court. She further states that on 25.10.2018, the learned Principal Judge sent back the matter to be tried by the same court as no specific reason of recusal was given by learned Family Judge and both the learned counsel displayed their complete faith in the learned Family Judge. She contends that since the court of Ms. Madhu Jain, the learned Family Judge, has already recused from the case for personal reasons, the case should not be tried by the said court and may be transferred to some other court.

5. Learned senior counsel for the respondent vehemently opposes the contention of the learned counsel for the petitioner and states that

Ms.Arпита Rai, Advocate, she herself along with Mr. Pranav Vashishtha, briefing counsel, were present before the learned Principal Judge, Family Court and both of them stated that they have complete faith in the court of Ms. Madhu Jain and expressed their desire that the case should be tried by the same court. She further submits that since the matter was sent back to the court of Ms. Madhu Jain on 25.10.2018, the learned Family Judge has passed several orders. It is not disputed by the learned counsel for the petitioner that after receiving back the file from the learned Principal Judge, Family Court, the court of Ms. Madhu Jain, learned Family Judge has been dealing with the matter and passed many orders after 25.10.2018.

6. The order passed by Ms. Madhu Jain, the learned Family Judge in HMA No.957/2018 reads as under :-

*“HMA No.957/18
23.10.2018*

*Present: Counsel Ms. Arпита Rai for the petitioner.
Respondent in person with Ms. Geeta Luthra,
Sr. Advocate & Shri Pranav Vashishth
Advocate.*

Due to some personal reasons, I do not wish to try the present case. Accordingly, both the parties are directed to appear before the court of Shri Sanjay Garg-I, learned Principal Judge, Family Courts, South East District, Saket New Delhi today itself at 3:00 pm.”

7. The learned Family Judge also passed a similar order in GP No.21/2018, which reads as under :-

*“GP No.21/18
23.10.2018*

*Present: Counsel Ms. Arpita Rai for the petitioner.
Respondent in person with Ms. Geeta Luthra,
Sr. Advocate & Shri Pranav Vashisth
Advocate.*

*Due to some personal reasons, I do not wish to try the
present case. Accordingly, both the parties are directed
to appear before the court of Shri Sanjay Garg-I,
learned Principal Judge, Family Courts, South East
District, Saket New Delhi today itself at 3:00 pm.”*

8. Both the learned counsel for the parties appeared before the learned Principal Judge, Family Court in the afternoon when both the learned counsel expressed complete faith in Ms. Madhu Jain, learned Judge, Family Courts, South-East District and desired that the case be tried by the same. However, the learned Principal Judge kept the matter pending to consider the request of the learned Judge, Family Court for consideration on 25.10.2018. The order passed by the learned Principal Judge, Family Court on 23.10.2018 in HMA No.957/2018 reads as under :-

*“HMA No.957/18
23.10.2018*

*Present: Ms. Arpita Rai, Ld. Counsel for petitioner.
Ms. Geeta Luthra, Ld. Sr. Counsel for
respondent & Shri Pranav Vashisth, Ld.
Counsel for respondent.*

Both the Ld. Counsels submit that they have complete faith in the court of Ms. Madhu Jain, Ld. Judge, Family Court, South East and wish that this case be tried by the same court.

Put up for consideration of the request of Ld. Judge, Family Court and the submissions of Ld. Counsels for 25.10.2018.”

9. The learned Principal Judge, Family Court passed a similar order in GP No.21/2018, which reads as under :-

*“GP No.21/18
23.10.2018*

*Present: Ms. Arpita Rai, Ld. Counsel for petitioner.
Ms. Geeta Luthra, Ld. Sr. Counsel for
respondent & Shri Pranav Vashisth, Ld.
Counsel for respondent.*

Both the Ld. Counsels submit that they have complete faith in the court of Ms. Madhu Jain, Ld. Judge, Family Court, South East and wish that this case be tried by the same court.

Put up for consideration of the request of Ld. Judge, Family Court and the submissions of Ld. Counsels for 25.10.2018.”

10. Since Ms. Madhu Jain, learned Family Judge didn't assign a specific reason for recusal, which coupled with the parties' desire to have the matter tried by the same court led the learned Principal Judge on 25.10.2018 to send back the petitions to the court of Ms. Madhu Jain to try in accordance with law. The view taken by the court of the learned Principal Judge is completely tenable and sustainable in law.

11. There is no substance and merit in the contention of the learned counsel for the petitioner that Ms. Arpita Rai, Advocate has not made a statement before the learned Principal Judge, Family Court on 23.10.2018. Even no affidavit of Ms. Rai is placed on record in support of the allegations. It is trite that the judicial orders passed by the courts carry a presumption of truth. If such statement was not made on 23.10.2018 by Ms. Rai, she should have brought to the notice of the learned Principal Judge, Family Court immediately after she became aware of it. There is no allegation of bias against the learned Family Judge, South-East District, Saket Courts, New Delhi. Simply because learned Family Judge recused from the cases, which were sent back to her by the learned Principal Judge for aforesaid reasons, there is no justification for transferring the petitions from the court of Ms. Madhu Jain to any other family court.

12. I do not find any merit in the petition. Accordingly, the transfer petition along with application, being C.M. No.5835/2019, is dismissed with no orders as to costs. The next date of hearing, that is, 18.02.2019, stands cancelled.

(VINOD GOEL)
JUDGE

FEBRUARY 06, 2019
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