

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****TPC No. 73 of 2019**

Smt. Smriti Shrivastava W/o Himanshu Shrivastava Aged About 28 Years R/o Street - No. 12, Lalbag, Sindhi Colony Near Royal Kids Rajnandgaon Tahsil - Distt Rajnandgaon Chhattisgarh Present Address - S- 1/A30 Vashundra Vihar Colony, Godhanpur, Ambikapur, Distt Surguja CG

---- Applicant**Versus**

Himanshu Shrivastava S/o A.K. Shrivastava Aged About 33 Years R/o Through - Abhishek Shrivastava, Street No. - 12 Lalbag, Sindhi Colony Near Royal Kids Rajnandgaon Tahsil - Distt. Rajnandgaon CG

---- Non-applicant

For applicant	: Shri Sanjay Pathak, Adv.
For Non-applicant	: Shri Abhishek Sharma, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORAL ORDER****21-1-2020**

1. Applicant has preferred this TPC under Section 24 of the Civil Procedure Code (in short 'CPC') for transfer of Civil Suit No. 69-A/2018 pending before the Family Court, Rajnandgaon (CG) (Himanshu Shrivastava -v- Smt. Smriti Shrivastava) to the Family Court, Ambikapur, Distt. Sarguja.
2. In brief, the applicant's case is that she is legally wedded wife of non-applicant. Now she is residing at Ambikapur, whereas he is resident of Rajnandgaon. On her complaint one criminal case under Section 498-A/34 of IPC and Section 4 of Dowry Prohibition Act is pending against him and his family members before the JMFC, Rajnandgaon. Her Civil Suit No. 84-A/2017 under Section 10 of Hindu Marriage Act and another case under Section 125 of Criminal Procedure Code are pending before the Family Court, Ambikapur. He filed a Civil Cuit No. 69A/2018 under Section 13 of the Hindu Marriage Act before the Family Court, Rajnandgaon. She has girl child aged about 3 years and it is very difficult for her to travel from Ambikapur to Rajnandgaon, distance between them is about 400 km.
3. In brief, non-applicant's case is that earlier non-applicant has filed an application under section 9 of Hindu Marriage Act which was decreed. She is getting Rs. 500/- travelling allowance for each appearance in divorce case.

He is 60% disabled person. He drew my attention on Annexure R-3, the cross-examination of the applicant is about to completion.

4. Counsel for the applicant placed reliance on the order of coordinate bench of this Court passed on 15-2-2017 in the matter of **Smt. Madhavi Singh -v- Rakesh Singh Thakur** in TPC No. 6/2016.

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

6. Counsel for the non-applicant placed reliance on a decision of Hon'ble Supreme Court in the matter of **Neelam Bhatia -v- Satbir Singh Bhatia** [2004(13) SCC 436] in which it has been observed in para 4 that -

“4. Having regard to the submissions made by the learned counsel for the parties, we think it just and appropriate to dispose of the transfer petition with the following directions:

The respondent husband shall bear the to-and-fro travelling expenses of the petitioner and one person accompanying her by train whenever she actually appears before the court. In case, the father of the petitioner alone travels to attend to the case, the expenses shall be paid to the father also for his travel to attend the court proceedings. On every date of appearance in the court at Korba, the incidental expenses of Rs 500 shall be paid in addition to the actual train fare by second class on each such occasion.”

7. Hon'ble Supreme Court in the matter of **Sumita Singh -v- Kumar Sanjay and another** [(2001) 10 SCC 41] has observed that if husband files suit against wife, then convenience of wife must be looked into.

8. Hon'ble Supreme Court in the matter of **Anindita Das -v- Srijit Das** [2006(9) SCC 197] observed in para 1 and 2 which reads as under :-

“1. This transfer petition has been filed by the wife on the ground that the petitioner has a small child of six years. She has further claimed that she has no source of income and it is difficult for her to attend the court at Delhi. She has further claimed that she is not keeping good

health.

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.”

9. Looking to the aforesaid observations made by Hon'ble Supreme Court in the matter of **Anindita Das** (supra), this Court finds that in aforesaid cases, **Smt. Madhavi Singh** (supra), **Neelam Bhatia** (supra), no legal principles have been laid down, those cases were decided on the facts of their respective cases, thus, respective parties do not get help from them.

10. Ambikapur is far away about 400 km from Rajnandgaon. There is no direct train between Ambikapur to Rajnandgaon. There is no frequent bus service between them.

11. Being a lady it would be inconvenient for her to travel from Ambikapur to Rajnandgaon along with 3 years old girl child.

12. On strength of 60% permanent disability it cannot be said that non-applicant cannot travel between Rajnandgaon and Ambikapur. Moreover, this is not the non-applicant's case that due to said disability he is not attending the cases under Section 498-A, of IPC and Section 4 of Dowry Prohibition Act and Section 125 of the Cr.P.C. at JMFC, Ambikapur.

13. Moreover, it would be proper that case filed under Section 10 of Hindu Marriage Act which is pending before the Family Court, Ambikapur and case filed under Section 13 of the Hindu Marriage Act which is pending before the Family Court, Rajnandgaon are to be heard simultaneously.

14. Looking to the above mentioned facts and circumstances of the case, looking to the observation made by Hon'ble Supreme Court in the matter of **Sumita Singh** (supra) and **Rajni Kishore Pardeshi** (supra), this Court finds that sound reasons exist in favour of the applicant for transfer of said case and balance of convenience is in favour of applicant.

15. Consequently, the instant transfer petition is allowed. It is ordered that the Civil Suit No. 69-A/2018 pending before the Family Court, Rajnandgaon

be transferred to Family Court, Ambikapur Distt. Sarguja (CG) for its trial/disposal in accordance with law. The Family Court, Rajnandgaon is directed to transmit the record of the above case to the Family Court, Ambakapur, distt. Sarguja.

16. In view of above order, I.A. No. 1/2019 stands disposed of.

17. No order as to costs.

Sd/-
(Sharad Kumar Gupta)
Judge