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

% Judgment delivered on: 12.05.2023

MAT.APP.(F.C.) 136/2023

+ **MAT.APP.(F.C.) 136/2023**

NAVIN SINHA

..... Appellant

versus

NAVETA SINHA

..... Respondent

Advocates who appeared in this case:

For the Appellant: Ms. Malvika Rajkotia with Ms. Aashna Talwar, Advocates.

For the Respondent: None.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 24784/2023 (Exemption)

Exemption allowed subject to all just exceptions.

MAT.APP.(F.C.) 136/2023

1. Appellant impugns order dated 21.04.2023, whereby, the petition filed by the appellant under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") has been returned on the ground that the Family Court at Gurugram is more convenient jurisdiction for the parties than the Courts at Delhi.

2. As per the averments in the petition, parties got married at Arya Samaj Mandir, Gole Market, New Delhi and thereafter the parties resided at IFFCO Colony, Gurugram, Haryana. The petition avers that since the parties got married in Delhi, the Courts at Delhi would have jurisdiction under Section 19 of the Act

3. Section 19 reads as under:-

"19. Court to which petition shall be presented.- Every petition under this Act shall be presented to the district court within the local limits of whose ordinary civil jurisdiction:-

- (i) the marriage was solemnized;*
- (ii) the respondent, at the time of the presentation of the petition, resides; or*
- (iii) the parties to the marriage last resided together; or*
- (iv) the petitioner is residing at the time of presentation of the petition, in case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive."*

4. The Family Court on the one hand has held that there is no doubt that the Family Court within whose jurisdiction marriage was solemnized will have jurisdiction to entertain the petition under the Act, but the scheme of Section 19 of the Act tilts in favour of convenience of the wife. The Family Court has also opined that the transfer petitions are filed before the Supreme Court for transfer of cases to Courts within whose jurisdiction the wife resides taking into account the convenience of the wife. The Family Court has further recorded that in case summons are issued and the wife is summoned,

then the Court would not be able to take a call with regard to her inconvenience and the only option to her would be to approach the Supreme Court for getting the matter transferred from the Family Court at Delhi to the Family Court at Gurgaon. Family Court has further held that forum shopping has never been encouraged by the Court.

5. We are unable to accept the rationale given by the Family Court for the reason that once the Family Court *prima facie* comes to a conclusion that the Court has jurisdiction, it could not have returned the plaint before summoning the respondent. The principle of *Forum non conveniens* is not a principle which can be applied by a Family Court to non-suit a petitioner especially when the Family Court in the order itself records that it would have jurisdiction to entertain the petition.

6. To allay the apprehension expressed by the Family Court with regard to the inconvenience of the respondent, at best the Family Court could have put the petitioner to terms *inter alia* deposit/payment of litigation expenses. Family Court could not have returned the plaint solely on the ground that once the summons are issued, the only option to the respondent would be to approach the Supreme Court for transfer of the proceedings from the Family Court at Delhi to Family Court at Gurugram.

7. We notice that the plaint was directed to be returned even prior to the issuance of the summons. Since notice has not yet been issued,

we have taken up the appeal without notice to the respondent and also because a pure question of law has arisen.

8. In view of the above, the impugned order dated 24.01.2023 is set aside. Petition is restored to its original number on the records of the Family Court.

9. Petition shall be listed before the Family Court for directions on 22nd May, 2023.

10. Appellant shall deposit an interim amount of Rs.25,000/- towards interim litigation expenses before the Family Court. The Family Court shall thereafter proceed with the matter on merits.

11. The appeal is allowed in the above terms.

12. It is clarified that this Court has neither considered nor commented upon the merits of the contentions of the appellant with regard to the jurisdiction. It would be open to the respondent to challenge the same in case she chooses to do so.

13. Order Dasti under the signatures of the Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

MAY 12, 2023

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