



\$~26

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

+ **TR.P.(C.) 89/2024 & CM APPL. 30061/2024**

RAKESH SHARMA

.....Petitioner

Through: Mr. Zubeda Begum, Mr. Kailash
Sharma, Ms. Sana Ansari and Ms.
Vanessa Singh, Advs.

versus

NEERJA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **18.11.2024**

1. This transfer petition seeks for transfer of Civ DJ/557/22, titled as *Rakesh Sharma vs Ms Neerja* pending before District Judge 07/west, Tis Hazari Courts, Delhi to the Family judge, West District, Tis Hazari Court, Delhi.

2. The plea is predominantly based upon the interpretation of Section 7 of the Family Courts Act, 1984 [“Act”] which, according to learned counsel appearing for the petitioner, *inter alia* requires the petitioner to approach the Family Court with respect to any dispute between a husband and a wife. Learned counsel while placing reliance on a decision of the High Court of Tripura and Agartala in *Dipika Sharma and Ors. Vs. Sudip Sharma and Ors.*¹ submits that in the instant case, the property in question is the subject

¹ MANU/TR/0246/2016



matter of the dispute between the plaintiff and defendant who happened to be in a conjugal relationship. She submits that though the decree of divorce was granted on 07.11.2019 yet as per her understanding the matter requires to be adjudicated by the Family Court as the Family Courts Act, 1984 has an overriding jurisdiction over any other law.

3. I have considered the aforesaid submission and have perused Section 7 of the Act, which reads as under:

“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 circumstance 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”

4. If the facts of the present case are examined on the anvil of legal provisions, the same would indicate that as on date, the plaintiff and defendant are not in a matrimonial relationship. The decree of divorce stood passed on 07.11.2019 and the same has also been affirmed by the Appellate Court.

5. Recently, the Division Bench of this Court has taken a categorical view on the scope of the jurisdiction of the Family Court in CS(OS) 601/2022 titled as *Geeta Anand v. Tanya Arjun & Anr.* The Court held that even the mere existence of a matrimonial relationship amongst the parties cannot be a determinative factor to invoke the jurisdiction of the Family Court. The relevant extract of the decision dated 01.04.2024 is reproduced herein:-

“The interplay as between the expressions “cause of action” and the term “circumstances” in the context of the subject provision must be deciphered in the follow manner; firstly, the averments in the plaint must explain the „cause of action” for instituting a suit or legal proceedings for injunction; and secondly that this „cause of action” is one which falls within the jurisdiction of the Family Courts. The cause of action, in order to bring the case under the subject provision and so as to confer jurisdiction upon the Family Court must encapsulate a tangible averment that the dispute is one which has an intrinsic nexus with the martial relationship. The circumstances should be of such a nature that it is demonstrable that the dispute is closely emanating from and surrounded by such matters which are integral to the marital relationship. Mere existence of a marital relationship between the litigating parties howsoever tangential cannot be the basis or the foundation for the proceedings being brought before a Family Court.”

6. In the present case, the petitioner seeks the transfer of a civil suit for possession filed against the respondent. The petitioner alleges that the respondent has refused to vacate the suit premises despite the dissolution of



matrimony between the parties and asserts that the respondent holds no ownership rights over the said premises. Notably, the suit was filed following the termination of the matrimonial relationship, and the cause of action does not stem from the matrimonial relationship but is purely a civil matter, rooted in the individual's right to possession. The dispute in the instant case does not originate from or is fundamental to the nexus of marital relationship as the marriage between the parties herein, has already been dissolved. Consequently, the existence of a prior matrimonial relationship between the parties does not preclude the jurisdiction of the Civil Court in this matter.

7. In view of the aforesaid, the Court is of the considered opinion that the present Court is competent to adjudicate the dispute and, therefore, the instant petition fails and is hereby dismissed.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 18, 2024/p