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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TR.P.(C.) 38/2026, CM APPL. 12215/2026 & CM APPL. 12216/2026**
AARTI SHARMAPetitioner

Through: Mr. Ranjan Sharma, Mr. Vipul Gupta
and Mr. Pawan Silmana, Advocates.

versus

DEEPAK SHARMARespondent
Through: Mr. Puneet Yadav, Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
16.03.2026

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 24(1)(b)(ii) of the CPC read with Section 151 of the CPC seeks the following prayers: -

“a) Pass an order thereby directing to transfer of the proceedings U/S 13(l)(ia)(i-b) of the HINDU MARRIAGE ACT, 1955 HAVING CASE NO. 3/2024 pending in the court of PRINCIPAL JUDGE ,FAMILY COURT, SOUTH WEST DWARKA COURT, DELHI titled as SMT. DEEPAK SHARMA V/S AARTI SHARMA to THE HON'BLE COURT OF, PRINCIPAL. JUDGE, FAMILY COURT, NORTH DISTRICT ROHINI, COURT DELHI(NORTH) and transfer petition may kindly be accepted;

b) Pass further order thereby stay of the proceedings U/S 13(l)(i-a)(i-b) of THE HINDU MARRIAGE ACT, 1955 pending in THE COURT OF PRINCIPAL JUDGE, FAMILY COURT, SOUTH WEST DWARKA COURT DELHI, HAVING CASE NO. 3/2024.



c) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. By way of the present petition, the petitioner seeks transfer of divorce petition filed by the respondent under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (for short, ‘HMA’), against the petitioner on the ground of cruelty and desertion pending before the Court of learned Principal Judge, South-West Dwarka to learned Principal Judge, Family Court, North-District, Rohini.

4. The petitioner herein had instituted a petition for restitution of conjugal rights under Section 9 of the HMA in 2023, and the same is pending before the Court of learned Principle Judge, Family Court, Rohini Delhi.

5. Learned counsel for the petitioner submitted that besides the aforesaid two petitions, there were other litigations pending between the parties, and the details of which have been provided in para 7 of the petition, which reads as under: -

“a. Execution petition pending before ROHINI COURT u/s 12 Protection of Women from Domestic violence Act. Case no. **5/2024**, titled [Arti Sharma vs. Deepak Sharma], **N.D.O.H - 15.04.2026**.

b. Case pending before ROHINI COURT u/s 12 Protection of Women from Domestic violence Act. case no. **5421/2018**, titled [Arti Sharma vs. Deepak Sharma & ors.], **N.D.O.H - 15.04.2026** and

c. Case pending before ROHINI COURT u/s 498A, 406, 506, 313, 34 IPC, FIR NO. 26/19,P.S. K.N.K. Marg, Case no. **2504/2019** titled [State vs. Deepak sharma], **N.D.O.H 15.04.2026**.



d. Case pending before ROHINI COURT u/s 125 CrPC Case no. 22/2023 titled [Arti Sharma & ANR. vs. Deepak sharma], N.D.O.H 20.05.2026.”

6. It is further submitted that the aforesaid cases are pending in Rohini Court and as all these cases pertain to same matrimonial relationship and involve common issues of fact in law, it will be in interest of justice and for proper adjudication of the all the cases that the divorce petition pending at Dwarka Court is transferred to Rohini Court and consolidated with the Section 9 petition filed by the petitioner for effective adjudication. It is further submitted that the petitioner is a working lady and has been taking care of the child of the parties and in case the present petition is not allowed the same would create undue hardship for her in pursuing the divorce petition.

7. *Per contra*, learned counsel for the respondent has drawn attention of this Court to Section 21A of the HMA and submitted that the present transfer would not be feasible as the said provision does not cover within its purview a petition under Section 9 of the HMA filed prior to any petition under the Act seeking relief under Section 10 or 13 of the HMA. It is further submitted that since HMA itself provides for a provision relating to transfer of petitions and any petition filed with respect to transfer of petition under Section 13 of the HMA would be governed by Section 21 of the HMA.

8. Heard learned counsel for the parties and perused the record.

9. Section 21A of the Hindu Marriage Act, 1955, reads as under: -

“21A. Power to transfer petitions in certain cases.—(1) Where—

(a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under



section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State, the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,—

(a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;

(b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.”

10. Section 21A(1) of the HMA deals with a situation where one party to a marriage has filed a petition either for judicial separation under Section 10 of the HMA or for a decree of divorce under Section 13 of the HMA, before a District Court having jurisdiction, and thereafter, the other party to the marriage, files a petition either under Section 10 or Section 13 of the HMA, before the same Court or different District Court in the same State or in a different State.

11. Power to transfer cases in the Civil Procedure Code, 1908, is provided



under Sections 24 and 25 which read thus: -

“24. General power of transfer and withdrawal.—(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which 1 [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section,— (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court; (b) “proceeding” includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]

[25. Power of Supreme Court to transfer suits, etc.—(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred



from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either retry it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.]”

12. The Hon’ble Supreme Court in **Shruti Kaushal Bisht v. Kaushal R. Bisht, (2020) 10 SCC 725: 2020 SCC OnLine SC 913**, while holding that Section 21A of the HMA does not divest the power available under Section 25(1) of the CPC, had observed and held as under: -

“11. In the case on hand, what was filed by the husband, first in point of time, was a petition for divorce and hence his case may fit into clause (a) of sub-section (1) of Section 21-A. But unfortunately for him, what was filed by the wife later in point of time was only a petition under Section 9 and not a petition either under Section 10 or under Section 13 of the Hindu Marriage Act. **Thus, the wife's petition, though subsequent in point of time, does not fall under clause (b) of sub-section (1) of Section 21-A. As a consequence, sub-section (1) of Section 21-A has no application to the case on hand, as the preconditions stipulated therein are not satisfied.**

12. In any case Section 21-A of the Hindu Marriage Act does not divest this Court of the power available under Section 25(1) of the



Code of Civil Procedure Code, 1908. In *Guda Vijayalakshmi v. Guda Ramachandra Sekhara Sastry* [*Guda Vijayalakshmi v. Guda Ramachandra Sekhara Sastry*, (1981) 2 SCC 646 : 1981 SCC (Cri) 574 : AIR 1981 SC 1143], this Court rejected the contention that the substantive provision contained in Section 25 CPC is excluded by reason of Section 21 of the Hindu Marriage Act, 1955. The words “subject to the other provisions contained in this Act” appearing in Section 21 of the Hindu Marriage Act, 1955 were construed by this Court to indicate only those provisions which are inconsistent with any of the provisions of the Act. The only test prescribed in Section 25(1) of the Code of Civil Procedure for the exercise of the power of transfer by this Court is “expediency for the ends of justice”. Therefore, the argument of the learned counsel for the husband centring around Section 21-A(2)(b) cannot be countenanced. The offer made by the husband to meet the travel expenses for the wife, does not appeal to me, as she may have to travel a distance of more than 1000 km every time. When the contention that the wife is unemployed and her claim that no maintenance is paid, are not seriously disputed, the offer now made by the husband does not convince me.

13. In view of the above, Transfer Petition No. 1264 of 2019 filed by the wife is allowed and, accordingly, the divorce petition PA No. 645 of 2019 titled as “*Kaushal R. Bisht v. Shruti Kaushal Bisht*” is hereby transferred from the Family Court, Pune, Maharashtra to the Court of Principal Judge, Family Court, Saket, New Delhi and it shall be tried together with the wife's petition under Section 9 of the Act. Let the records of the case be transferred to the court concerned without delay. Transfer Petition No. 2168 of 2019 filed by the husband is dismissed.”

(emphasis supplied)

13. In the present case, the petition under Section 9 of the HMA was filed by the petitioner in 2023. The subject divorce petition had been instituted by the respondent after the filing of the aforesaid petition under Section 9 of the HMA on behalf of petitioner in 2024. Perusal of the present petition shows that there are already other litigation pending between the parties before learned Family Court, Rohini Courts. All the said cases pertain to the same



matrimonial dispute. During the course of hearing, the learned counsels for the parties submitted that in petition under Section 9 of the HMA, list of witnesses have already been filed and the matter is at the stage of petitioner's evidence. The divorce petition pending in Dwarka Courts filed by the respondent is also stated to be at the same stage.

14. The petitioner is a working lady and is pursuing a job as also, looking after the child born out of wedlock of the parties. Therefore, no prejudice will be caused to the respondent, in case, the divorce petition filed in Dwarka Courts is transferred to Rohini Courts for effective adjudication in the interest of justice.

15. The Hon'ble Supreme Court in **Ruchi Rawat v. Principal Judge, Family Court, Etah & Anr., 2022 SCC OnLine SC 2036**, had observed and held as under: -

“4. It is well-settled that in matrimonial matters generally, it is wife's convenience which must be looked at while considering the transfer. In N.C.V. Aishwarya v. A.S. Saravana Karthik Sha (Civil Appeal No. 4894 of 2022, disposed of on 18.07.2022), it was held as under:

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio-economic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.””



16. In these circumstances, it is directed that HMA No. 3/2024 pending in the Court of learned Principle Judge, Family Courts, South West, Dwarka Courts, Delhi, shall be transferred to the Court of learned Principle Judge, Family Courts, North, Rohini Courts, Delhi, where the petition under Section 9 of the HMA filed on behalf of the petitioner is pending. The said divorce petition shall be proceeded from the stage, it is being transferred and shall be tried along with the petition under Section 9 of the HMA filed by the petitioner.

17. Let the records of HMA No. 3/2024 pending in the Court of learned Principle Judge, Family Courts, South West, Dwarka Courts, Delhi, be transferred to the aforesaid concerned Court within a period of 10 days.

18. Parties are directed to appear before the learned Principal Judge, Family Courts, North District, Rohini Courts, Delhi, accordingly.

19. Copy of the order be sent to learned Principal Judge, South West, Dwarka Courts, New Delhi and learned Principal Judge, North District, Rohini Courts, Delhi, for necessary information and compliance.

20. The present petition is allowed and disposed of.

21. Pending applications, if any, also stand disposed of accordingly.

22. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

MARCH 16, 2026/bsr/ns