

**Court No. - 9**

**Case :-** TRANSFER APPLICATION (CIVIL) No. - 704 of 2021

**Applicant :-** Smt. Shalinee Dubey @ Radhika Dubey

**Opposite Party :-** Abhishek Tripathi @ Gopal

**Counsel for Applicant :-** Chaman Aara, Shiv Vilas Mishra

**Counsel for Opposite Party :-** Shreesh Srivastava

**Hon'ble Neeraj Tiwari, J.**

Heard learned counsel for the applicant and Mr. Shreesh Srivastava, learned counsel for the opposite party.

Learned counsel for the applicant submitted that applicant is residing at District Etawah. She has also filed Case No. 301 of 2019, under Section 125 Cr.P.C and Case No. 227 of 2019, under Section 12 of Domestic Violence Act at there. He next submitted that only to harass the applicant, opposite party has filed Divorce Petition No. 46 of 2019 before the Principal Judge, Family Court, Auraiya. He further submitted that while she was visting at Auraiya alongwith her father, she was misbehaved and threatened to face dare consequences. For which, applicant has also moved an application before the Senior Superintendent of Police, Auraiya. Lastly, he submitted that under such facts and circumstances, direction may be issued to Court below to transfer her case from Auraiya to Etawah.

Mr. Shreesh Srivastava, learned counsel for the opposite party has vehemently opposed the submission of learned counsel for the applicant and submitted that applicant is still residing at District Auraiya, which may be verified from the correspondence between the applicant and S.S.P., Auraiya. Further, pursuant to her alleged application before S.S.P., Auraiya, no FIR has been lodged. He next submitted that in the divorce petition, applicant has also filed written statements and testimony of P.W.-1 and P.W.-2 have also been recorded. He further submitted that during the pendency of divorce petition, applicant has filed an application under Section 24 of Hindu Marriage Act, 1955 (hereinafter referred to as Act, 1955) for *pendente lite* maintenance and litigation expenses, which was partly allowed vide order dated 6.4.2021. Opposite party is paying the litigation expenses to the applicant as directed by the Court below vide order dated 6.4.2021. He also submitted that except the testimony of defence witnesses, nothing remains to be recorded for adjudication of the case. In support of his contention, he has placed reliance upon the judgment of the Apex Court in the case of ***Abhilasha Gupta vs. Harimohan Gupta reported in 2021 9 SCC 730*** decided on 24.9.2021 in which Apex Court has taken the view that once the application under Section 24 of Act, 1955 is allowed and case is at the verge of final decision, no interference is required.

In his rejoinder argument, learned counsel for the applicant submitted that she is facing problem in appearing before the Family Court, Auraiya, but he could not

dispute this fact that she is receiving the litigation expenses upon her application under Section 24 of Act, 1955 as directed by this Court vide order dated 6.4.2021.

I have considered the rival submissions of learned counsel for the parties and perused the record as well as judgment of Apex Court. Facts of the case are undisputed that applicant has filed written statements before the Court below and testimony of P.W.-1 & P.W.-2 have also been recorded. It is also not disputed that applicant is receiving litigation expenses on month to month basis awarded by the Court below vide order dated 6.4.2021 upon her application under Section 24 of Act, 1955. In the matter of **Abhilasha Gupta (Supra)**, the very same controversy is before the Apex Court in which Apex Court has refused to interfere the transfer application. The said judgment of Apex Court dated 24.9.2021 is being quoted hereinbelow:-

*"The present petition has been filed by the petitioner- wife praying inter alia for transfer of a petition for divorce filed by the respondent-husband under Section 13(a) (ia) of the Hindu Marriage Act, 1955 bearing H.M. Case No. A-130 of 2019 titled "Harimohan Gupta vs. Abhilasha Gupta", pending before the Court of the Additional District and Sessions Judge, Susner, Madhya Pradesh to the Family Court at Kota, Rajasthan. Counter affidavit in opposition to the present petition has been filed by the respondent.*

*Ms. Ranu Purohit, learned counsel for the respondent- husband states that the divorce petition filed by the respondent-husband is at an advance stage. She draws the attention of this Court to the date-wise tabulated statement Signature Not Verified Digitally signed by Dr. Mukesh Nasa Date: 2021.09.29 17:35:56 IST Reason: enclosed with the counter affidavit, marked as Annexure R-1 and states that the evidence of the husband has concluded and the wife has not cited any other witness except for herself. The matter was last listed on 06.08.2021, for recording her testimony but due to the stay order granted in the present proceeding on 20.07.2021, the said matter has been adjourned.*

*The learned counsel further stated that the distance between present place of residence of the petitioner-wife and the Family Court at Kota, Rajasthan is less than 200 kilometers and offers that the respondent-husband is willing to pay the expenses towards commuting to the petitioner-wife to enable her to appear before the learned Family Court at Kota, Rajasthan for expeditious conclusion of her evidence and final arguments.*

*The learned counsel for the respondent-husband draws the attention of this Court to the order dated 14.10.2019, passed by the learned Court of the Additional District and Sessions Judge, Susren, Madhya Pradesh which recorded the request of the petitioner-wife to the effect that she may be paid a sum of Rs. 3,000/- (Rupees Three Thousand only) as transportation charges to appear in the Court alongwith an attendant.*

*Having regard to the advance stage of the divorce petition filed by the respondent-husband against the petitioner- wife at Kota, this Court is not inclined to allow the present petition. However, it is deemed appropriate to direct the respondent-husband to pay a sum of Rs. 4,000/- (Rupees Four Thousand Only) to the petitioner-wife for appearance on each date of hearing before the Court of Additional District and Sessions Judge, Susren, Madhya Pradesh, towards transportation charges.*

*The transfer petition is disposed of with the aforesaid orders. Interim order dated 20.07.2021 stands vacated."*

From the perusal of the aforesaid judgment, it is apparent that present controversy is squarely covered with the judgment of Apex Court in the case of **Abhilasha Gupta (Supra)**.

Once the applicant has moved application under Section 24 of Act, 1955, which was allowed and uninterrupted litigation expenses is paid to her, she cannot move transfer application on the ground of distance and financial stress. Similarly, in case the proceedings is at the verge of final hearing, any interference in transfer application would only delay the proceedings. Therefore, under such circumstances, no interference is warranted and transfer application is liable to be dismissed.

Accordingly, in light of facts mentioned hereinabove as well as law settled by the Apex Court, transfer application lacks merit and is accordingly, **dismissed**. No order as to costs.

However, in case of threat perception, liberty is given to the applicant to move application before the S.S.P., Etawah alongwith order of this Court for security for the date of appearance. In case, any such application is moved before the S.S.P., Etawah, he shall provide ample security to applicant or other witnesses on the date of their appearances before the Principal Judge, Family Court, Auraiya.

This order of security shall be confined to only dates of appearance of applicant and other witnesses before the Court and not for any other purpose.

Principal Judge, Family Court, Auraiya is directed to make all endeavour to decide the aforesaid case maximum within a period of three months from the date of production of certified copy of this order.

**Order Date :- 23.3.2022**

Junaid