

Court No. - 4

Case :- TRANSFER APPLICATION (CIVIL) No. - 70 of 2011

Petitioner :- Smt. Suchitra Gupta

Respondent :- Principal Judge, Family Court And Another

Petitioner Counsel :- Pramod Kumar Dubey, Shailendra Singh

Respondent Counsel :- M.L.Maurya

Hon'ble Pankaj Mithal, J.

Heard Sri Shailendra Singh, learned counsel for the applicant and Sri Manuj Gupta, respondent No.2 in person.

This is an application under Section 24 C.P.C. for transfer of divorce petition instituted by the husband under Section 13 of the Hindu Marriage Act before the Family Court at Kanpur to Gorakhpur where the applicant is said to be residing.

Two points have been raised for seeking transfer of the divorce petition from Kanpur to Gorakhpur. The first ground is that the applicant is a resident of Gorakhpur and being a lady she cannot travel to Kanpur easily. The other ground is that other cases, one under Section 125 Cr.P.C. and the other under the Prevention of Domestic Violence Act, 2005 are also pending at Gorakhpur.

The transfer application has been strongly opposed by respondent No.2 on the ground that the applicant has been making false statements and is adopting harassing tactics. He is a law student of Meerut College affiliated to the Chowdhary Charan Singh University, Meerut and it will be more difficult for him to go to Gorakhpur. He has further submitted that at Gorakhpur he is not getting a proper lawyer and every time in other suits he has to engage a new counsel.

In the transfer application or in the affidavit in support thereof there is no averment about pendency of any other proceedings as argued, at Gorakhpur. The only relevant averments are in paragraphs 11, 14 and 15 of the application which are reproduced herein below:

"11. That the applicant is a lady and her father is aged about 62 years and mother is aged about 60 years and being pardanashin lady she can not travel from District Gorakhpur to Kanpur.

14. That the applicant are resident of Gorakhpur and marriage of the applicant has also solemnized at Gorakhpur and being a woman it is settled law that suit would be tried at place where wife is a resident therefore, the suit is liable to be transferred at Gorakhpur.

15. That it is pertinent to mention here that the applicant has no source of income for livelihood herself and also dependent of father and mother of applicant."

The reference of the two cases said to be pending at Gorakhpur has been made only in paragraph 19 of the rejoinder affidavit.

It is well acknowledged that the courts are always liberal in allowing matrimonial proceeding to be prosecuted at a place which is convenient to the parties, particularly that which is more convenient to the wife. It is further in the interest of justice that all proceedings arising therefrom be consolidated and considered together.

However, merely the reason that the applicant is resident of Gorakhpur and that some other proceedings are pending at Gorakhpur it is not sufficient to transfer the proceedings particularly when in the application there is no averment explaining difficulty likely to be faced by the applicant in traveling to Kanpur and attending the proceedings. There is no averment that she is facing difficulty in getting legal assistance at Kanpur or that she is under any kind of threat if she attends proceedings at Kanpur. On the other hand, in paragraph 15 of the counter affidavit on behalf of the respondent No.2 it has been expressed that he is ready and willing to pay the traveling expenses from Gorakhpur to Kanpur by sleeper class for the purpose of attending the proceedings and incidental expenses.

In *Shiv Kumari Devendra Ojha Vs. Ramajor Shitla Prasad Ojha and others AIR 1997 SC 1036* it was held that where the party is agreeing to bear expenditure of travel etc. of the applicant to attend the Court, transfer of proceedings is not necessary.

In view of the above, coupled with the fact that the two proceedings at Gorakhpur are only in connection with grant of maintenance which could be given to the applicant more appropriately in the divorce proceedings itself, I am of the view that no case for transfer has been made out.

In view of the overall situation of the case, I do not consider it fit

and proper to transfer the divorce case to Gorakhpur.

The applicant till date has not filed even her written statement in the divorce case.

The applicant shall file her written statement at Kanpur either in person or through an Advocate within a period of one month from today.

Section 21-B of the Hindu Marriage Act, 1955 provides that the trial of a petition under this Act shall, so far as is practicable, be continued from day to day until its conclusion and every petition shall be tried as expeditiously as possible and endeavor be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

In view of the above mandate of Section 21-B of the Hindu Marriage Act the Principal Judge, Family Court, Kanpur is directed to proceed with the divorce petition and decide it within a period of six months from the date of production of certified copy of this order, provided there is no legal impediment in deciding the same.

The application is rejected.

Order Date :- 14.9.2012

brizesh