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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Transfer Application No. 72/2021

Smt. Ekta Dhadhich W/o Sh. Rajendra Prasad Sharma, D/o Giriraj Mishra, aged about 35 Years, R/o near B.Ed. College Sakatpura, Kota (Rajasthan.)

----Applicant-Petitioner

Versus

Rajendra Prasad Sharma S/o Ghanshyam Sharma, R/o Ward No. 19, Ganesh Colony, Krishi Mandi Road, Sarvad, Tehsil Sarvad, District Ajmer (Rajasthan.)

----Non-applicant-Respondent

For Petitioner(s) : Mr. Abhishek Bhardwaj, Advocate
For Respondent(s) : Mr. Arnav Singh, Advocate

HON'BLE MR. JUSTICE CHANDRA KUMAR SONGARA

Order

Date of Order

30th September, 2021

By the Court :

Instant transfer application under Section 24 of the Code of Civil Procedure, 1908 has been preferred on behalf of the petitioner-wife seeking transfer of the Divorce Petition bearing No.39/2020 titled as *Rajendra Prasad Sharma Vs. Smt. Ekta Dhadhich* filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act of 1955') by the respondent-husband from the Court of Additional District Judge, Kekri District Ajmer to the Family Court situated at Kota.

Learned counsel appearing for the petitioner-wife has submitted that the marriage between the parties was solemnized on 12.05.2018 at *Sarvar* District Ajmer as per Hindu rites, rituals & customs. Counsel has further submitted that the petitioner has a daughter, namely Vaidehi from her first husband, presently she is six



years old and is being taken care of by the petitioner alone and the respondent-husband is also a divorcee. Counsel has also submitted that the petitioner and respondent have resided together till 12.05.2019. Thereafter, the respondent and his family abandoned the petitioner and since then she has been residing at her parental home in Kota.

Counsel appearing for the petitioner-wife has contended that the petitioner was constrained to file complaint with the Women Police Station, Kota City, which later-on culminated into an F.I.R. Counsel has further contended that the F.I.R. bearing No.211/2020 was registered on 05.09.2020 for offences punishable under Sections 498-A and 406 of I.P.C. against the respondent and his five other family members. Counsel has also contended that the petitioner also filed a complaint under Section 12 of the Protection of Women From Domestic Violence Act, 2005 before the Court of learned Judicial Magistrate No.2 (South) Kota, which was registered as Criminal Miscellaneous Case No.2400/2020 titled as "*Ekta Dhadhich Vs. Rajendra Prasad & Others*."

Counsel appearing for the petitioner-wife has pleaded that the petitioner also filed a complaint under Section 125 of Cr.P.C. before the learned Family Court, Kota titled as "*Smt. Ekta Dhadhich & another Vs. Rajendra Prasad Sharma*" and as a counter-blast to the aforesaid proceedings, the respondent has filed a Divorce Petition under Section 13 of the Act of 1955 against the petitioner, pending before the Court of learned District & Sessions Judge, Kekri District Ajmer. Counsel has further pleaded that the petitioner also had to take care of her six year old daughter and her old aged parents, who are solely dependent on her. Counsel has also pleaded that the petitioner is a house-wife and not employed anywhere. She has no source of income and does not have any personal independent mode of transportation.

Counsel appearing for the petitioner-wife has argued that the daughter of the petitioner being six years old requires constant care



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and attention, so it is neither possible for the petitioner to leave her alone for almost 7-8 hours nor to take her alongwith her to the Court. Counsel has further argued that the parents of the petitioner are too old and no male member is available in the family, who could attend the Court hearing along with the petitioner. Counsel has also argued that Kekri Court in District Ajmer is at a distance of more than 100 Kms. and one way journey takes approximately three to five hours. Lastly, counsel prayed that the aforesaid pending divorce petition may kindly be transferred from the Court of Additional District Judge, Kekri District Ajmer to the learned Family Court at Kota.

In support of his case, learned counsel appearing for the petitioner-wife, has placed reliance upon the following judgments viz.,

(i) Asma Parveen Vs. Javed Bhati, reported as 2018 (4) RLW 3511 (Raj.), **(ii) Sumita Singh Vs. Kumar Sanjay and Others**, reported as AIR 2002 SC 396, **(iii) Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi**, reported as (2005) 12 SCC 237 **(iv) Vaishali Shridhar Jagtap Vs. Shridhar Vishwanath Jagtap**, reported as AIR 2016 SC 3584 and **(v) Pramila Kumari Sharma Vs. Narayan Sharma**, reported as 2010 (1) WLN 245 respectively.

The transfer application has been contested by the learned counsel appearing for the respondent-husband and it has been submitted on his behalf that the respondent has been living with his parents at Sarvar, District Ajmer and is working on the post of Panchayat Sahayak at Gram Panchayat Lallai Panchayat Samiti Sarvar District Ajmer, on contractual basis and drawing salary @ Rs.6000/- per month. Counsel has further submitted that the father of the respondent is suffering from severe back pain and is not even in a position to walk properly. Under such circumstances, it would be difficult for the respondent to keep travelling to Kota to attend the Court dates. Counsel has also submitted that the father of the petitioner-wife is an Advocate



at Kota and with the intention to manipulate the proceedings, the petitioner-wife has filed the present application for transfer of divorce petition at Kota. Counsel has contended that the respondent has filed an application under Section 13 of the Act of 1955 on 02.07.2020 and as a counter blast to the said application, the petitioner initiated several false proceedings including F.I.R. bearing No.211/2020 dated 05.09.2020 at Women Police Station, Kota City. Lastly, counsel prayed that the present transfer application deserves to be dismissed being misconceived and ill-founded.

In support of his case, learned counsel appearing for the respondent-husband, has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Anindita Das Vs. Srijit Das**, reported as (2006) 9 SCC 197.

I have considered the submissions made by learned counsel appearing for the parties and have perused the material made available on record.

A Co-ordinate Bench of this Court in the case of Asma Parveen (**Supra**), held as under :-

"8. *It is an undisputed fact that the applicant-wife in the instant transfer petition is not only young and a Pardanasheen lady but she also does not have any independent source of income. In the absence of a stable income, it would cause her great hardship if the proceedings are allowed to continue at Jhunjhunu since she is not in a position to bear her travel expenses. It used to be a well established and settled legal position that while going into the merits of a transfer application, courts are required to give more weight and consideration to the convenience of the female litigants and transfer of legal proceedings from one court to another should ordinarily be allowed taking into consideration their convenience and the courts should desist from putting female litigants under undue hardships. However, it has been contended by the learned counsel for the non-applicant husband that the position of law is not the same anymore and the Hon'ble Supreme Court*



has interpreted the law related to transfer applications differently in a recent case. Hence, it is essential to briefly discuss the ratio decidendi of the said decision.”

In the case of Sumita Singh (**Supra**), Hon'ble Apex Court held as under :-

"3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute."

In the case of Rajani Kishor Pardeshi (**Supra**), Hon'ble Apex Court held as under :-

"4. In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband. Hindu Marriage Petition No.6 of 2004, Kishor Babulal Pardeshi v. Rajani Kishor Pardeshi pending before the Court of Civil Judge, Senior Division at Panvel, Mumbai, Maharashtra is transferred to the Family Court of proper jurisdiction at Satana, Madhya Pradesh."

In the case of Vaishali Shridhar Jagtap (**Supra**), Hon'ble Apex Court held as under :-

"3. According to the appellant, her mother is aged and it is difficult for her mother to accompany the appellant for her travel to Mumbai. It is also stated that there are three criminal cases - one for maintenance, the second under the Prevention of Domestic Violence Act, 2005 and the third under Section 498A of The Indian Penal Code, 1860 and other related provisions, pending at Barshi, and one on the civil side for restitution.

5. Admittedly, the distance between Mumbai and Barshi is around 400 kilometres. Four cases between the parties are pending at Barshi. Apparently, the comparative hardship is more to the appellant-wife. This aspect of the matter, unfortunately, the High Court has missed to take note of.

6. In view of the above, the impugned orders are set aside and the M. J. Petition No. 2287 of 2013 filed by the respondent-husband in Family Court Bandra, Bombay will stand transferred to the Court of competent jurisdiction at Barshi.”



A Co-ordinate Bench of the Principal Seat at Jodhpur in the case of *Pramila Kumari Sharma (Supra)*, held as under :-

"2. Learned counsel for the petitioner-wife Mr. Vishal Sharma submitted that the lady being alone having child of 3 ½ years son Keshav has extreme difficulty to attend the hearing at Ajmer Court by undertaking a journey of 2 hours on each occasion. He also submits that she is unemployed and now will have to seek employment to earn her livelihood.

6. Having heard learned counsels and in view of the submissions made in the application and in view of the facts and circumstances of the case stated above, this Court considers expedient to transfer the proceedings of case No.203/2009 - *Narayan Sharma Vs. Pramila Kumari Sharma* pending in the Family Court, Ajmer to the learned District and Sessions Judge, Merta."

In the present case, the petitioner-wife is residing in Kota at her parental house. The petitioner-wife has a daughter, namely Vaidehi from her first husband. Presently, she is six years old and is being taken care of by the petitioner alone. The petitioner is a house-wife and she is not employed anywhere and has no source of income. The Kekri Court in Ajmer District is at a distance of more than 100 kms. from Kota. The daughter of petitioner is about six years old and parents of petitioner are too old.

It is well settled legal position that while going into the merits of a transfer application, Courts are required to give more weightage and consideration to the convenience of the female litigants, and transfer of legal proceedings from one Court to another should ordinarily be allowed taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships. In such type of matters, the convenience of the wife is to be preferred over the convenience of the husband.



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Judgment in Anindita Das (**Supra**) relied upon by the learned counsel appearing for the respondent-husband, fails to advance the case of the respondent-husband, as the respondent's case is based on different facts, whereas the judgments in *Asma Parveen*, *Sumita Singh*, *Rajani Kishor Pardeshi*, *Vaishali Shridhar Jagtap* and *Pramila Kumari Sharma* (**Supra**) relied upon by the learned counsel appearing for the petitioner-wife, wherein the Hon'ble Apex Court and the Coordinate Bench of this Court had allowed the transfer petition of the wife-petitioner on the grounds of having a child, no source of income and residing with her parents, support the case of the petitioner-wife.

In view of the above discussion, the present transfer application filed by the petitioner-wife is allowed and case bearing No.39/2020 titled as *Rajendra Prasad Sharma Vs. Smt. Ekta Dhadhich* pending before the Court of Additional District Judge, Kekri District Ajmer is ordered to be transferred to the Family Court, No.1, Kota.

The parties shall appear before the Family Court No.1, Kota on **28.10.2021**.

The Court of Additional District Judge, Kekri, District Ajmer is directed to remit the record of case bearing No.39/2020 titled as *Rajendra Prasad Sharma Vs. Smt. Ekta Dhadhich* to the Family Court, No.1, Kota immediately.

Pending applications, if any, also stand disposed of.

(CHANDRA KUMAR SONGARA),J.

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