

(2014) 08 AHC CK 0143

In the Allahabad High Court

Case No : C.M. Transfer Application No. 19 of 2014

Payal Agarwal

APPELLANT

Vs

Vinay Kumar Agarwal

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Hindu Marriage Act, 1955 — Section 13

Citation : (2014) 5 AWC 5223

Hon'ble Judges : Mohd. Tahir, J

Bench : Single Bench

Advocate : Vaibhav Kaushik, Advocate for the Appellant; Swetashwa Agarwal, Advocate for the Respondent

Judgement

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Mohd. Tahir, J.—Case called out. Counsels for both the parties are present.

2. The applicant-wife is seeking transfer of Divorce Petition No. 1631 of 2013, Vinay Kumar Agarwal v. Smt. Payal Agarwal, under Section 13 of Hindu Marriage Act, pending before the Principal Judge, Family Court, Lucknow to Muzaffarnagar on the ground of her convenience and that certain proceedings between the parties are pending at Muzaffarnagar.

3. Heard learned counsels for both the parties on the point of maintainability of this transfer application in this Court at Allahabad and perused the record.

4. Admittedly, the case sought to be transferred relates to district Lucknow. According to the ruling of the Hon'ble Supreme Court given in the case of Sri Nasiruddin Vs. State Transport Appellate Tribunal, , as well as the ruling of the Allahabad High Court given in the case of Smt. Jyotsan Dixit Vs. Civil Judge, Khiri and others, , this transfer application is not maintainable in this Court at Allahabad but the same is maintainable before Lucknow Bench of Allahabad High Court. In the case of Sushma v. Vikramaditya, AIR 1988 All 48, also in which the

Division Bench ruling of this Court, namely, *Nem Chand Vs. The State*, has been referred to, it has been held that a proceeding under Section 24, C.P.C. is to be initiated before the Bench within whose jurisdiction the suit sought to be transferred, is pending. In the case of *Nasiruddin (supra)*, it has also been held that if any case has been mistakenly or inadvertently entertained at Allahabad, a direction should be made to the High Court Office to transmit the papers of the case to Lucknow instead of returning back the case for filing before the Judges at Lucknow.

5. Since the case at hand has been entertained at Allahabad vide order dated 27.1.2014, so it will not be proper for returning the same to the applicant for filing it before Lucknow Bench. Under these circumstances, this transfer application is transferred to the Lucknow Bench with notice to both the learned counsel. Record be sent to the Lucknow Bench within two weeks and the same be listed subject to permission of the court concerned.

6. Registry is directed to take necessary action for transferring this case to Lucknow Bench.