

(2001) 01 MP CK 0063

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 327 of 2000

Punampursho

APPELLANT

Vs

Putsh

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2001) 1 DMC 547

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : Achala Joshi, for the Appellant; V.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Gohil, J.—Heard. This is a transfer application u/s 24 of the CPC which has been filed by the applicant/wife for transfer of suit/proceedings for divorce pending before the Court of IXth Additional District Judge, Indore as Divorce Case No. 174 of 2000.

2. The applicant has filed this application on the ground that the marriage between the parties took place on 20th November, 1995 at Indore and thereafter out of the wedlock one son Sanjay was also born but the non-applicant/husband deserted the applicant/wife when she was pregnant and now at present she is residing at Chhatarpur along with her father. The further submission of the learned Counsel for the applicant is that the father of the applicant is old and infirm and a retired person aged about 65 years and the distance between Chhatarpur to Indore is around 525 kms., therefore, she cannot come on each and every hearing along with a small child to attend the hearing. The further submission is that to reach Indore she has to undertake a long journey including one night and there is no body in the family to come along with the applicant. Therefore, it is very difficult to perform such a long journey safely. In support of the submission, the learned Counsel for the applicant relied on a decision of the Supreme Court in the case of Ravinder Kaur v. Hitinder Singh, reported in 2000

3. In reply the submission of the learned Counsel for the non-applicant/ husband is that the marriage took place at Indore but the child does not belong to the husband and, therefore, he has filed this petition on the ground of cruelty as well as on the ground that the applicant is living in adultery and having a son not out of the wedlock of the non-applicant but with some other person, namely Radhamohan Khare who is the brother-in-law of the applicant. The further submission of the learned Counsel for the non-applicant is that an application u/s 24 of the Hindu Marriage Act is also pending for consideration in which she has claimed the expenses of attending the hearing along with one attendant and she can attend the Court very well and she may also engage the services of some Lawyer and also claim the amount of legal expenses. He relied on the decision in the case of Smt. Nirmala Devi v. Ravindra Singh, reported in 1999 (1) MPWN 9=1 (1999) DMC 467.

4. I have heard learned Counsel for the parties and perused the record.

5. It is true that an application u/s 24 of the Hindu Marriage Act is pending for claiming the legal expenses and also the expenses for attending the Court but the Trial Court has not decided the same upto now. It is also true that the applicant/wife has not filed written-statement of the application of the divorce before the Trial Court. I have also gone through the application of the applicant in which she has not stated that whether the father of the applicant is a permanent resident of Chhatarpur or whether he is residing there temporarily. As she has also not filed any written-statement on the record to know something about the fact and truthfulness of the allegations of having adultery. In view of the averments mentioned in the application and also in view of the fact that an application u/s 24 is pending before the Trial Court in which she has also claimed expenses for coming to attend the case at Indore, therefore, according to this Court this application seems to be pre-mature. The applicant can claim and the Trial Court may also award the amount towards expenses for attending the Court along with the son and also for one attendant and may also consider inconvenience of the applicant. The Court may also consider the circumstances that the applicant may come along with the father or any other relative of the family to attend the Court and may also claim the expenses of one attendant/assistant. Since the applicant has not stated that how she is living at Chhatarpur whether temporarily or permanently along with the father, when the marriage took place at Indore, whether the parents of the applicant are the residents of Indore. Therefore, in the absence of the aforesaid pleadings in the application the correct and full facts are not known to the Court to reach on some conclusion about the difficulties of the applicant. It would have been desirable for the applicant to file such an application after filing written-statement as well as after consideration of the application u/s 24 of the Hindu Marriage Act and after two or three hearings and thereafter should have narrated the difficulties which she is facing in attending the trial. As the applicant has not filed any written-statement

or written reply of the main application of divorce petition. This transfer petition at this stage is misconceived and pre-mature.

6. Accordingly at this stage I do not see any merit in this application. It is dismissed. No order as to costs. Record be returned.