
(2017) 02 MP CK 0182
In the Madhya Pradesh High Court
Case No : 2686 of 2016

Sher Singh @ Mullu

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Code of Civil Procedure, 1908, Section 24 - General power of transfer and withdrawal
Family Courts Act, 1984, Section 13 - Right to legal representation

Citation : (2017) 02 MP CK 0182

Hon'ble Judges : Vijay Kumar Shukla

Bench : Division Bench

Advocate : Himanshu Mishra, Anurag Sahu

Judgement

1. This is an application filed under Section 24 of the CPC by wife for transfer of the matrimonial matter from the Court of Principal Judge, Family Court, Jabalpur to the District Judge, Mandla.

2. The applicant has submitted that she was married with the respondent as per Hindu Rights and Rituals on 16.05.2010 at Nainpur, District Mandla. She is working in District Co-operative Bank at Nainpur, District Mandla. It is submitted by her that the non-applicant/husband is an advocate by profession and he is residing at Jabalpur. It is submitted that there is likelihood of influencing the proceedings of matrimonial matter being tried at Jabalpur. It is further submitted in the application that at present she is working at Mandla and it is not possible for her to travel to 150 K.Ms. to attend each and every dates in the case. She has further stated that because of these difficulties and in absence of effective representation on her part, she was proceeded with ex-parte on 09.08.2016.

3. Learned counsel for the applicant submits that looking to the convenience of the applicant the balance is in her favour, therefore, the matter pending before

the Family Court, Jabalpur is prayed to be transferred to the Family Court, Mandla. He relies upon the order dated 09.01.2017 passed by the Apex Court in Transfer Petition (s) (Civil) No.(s) 1912/2014 Krishna Veni Nagam Vs Harish Nigam .

4. Per contra the learned counsel for the nonapplicant submits that the applicant has already been granted permission under Section 13 of the Family Courts Act and she is being represented by an Advocate. He refers to the various order-sheets of the Court below dated 11.04.2016, 15.05.2016 to contend that the reasonable opportunities have been afforded to the applicant. It is also submitted by him that the application for setting aside the ex-parte proceedings has also been filed before the Court which is pending for consideration. It is submitted that the case is pending before the Family Court, Jabalpur is at advanced stage and it is fixed for evidence. He further submits that the said matter is pending since 2015 and he relies on the order-sheet of the Court below to contend that no point of time the proceeding is influenced by the nonapplicant. The ample opportunity is granted to the applicant which is reflected from the order-sheet. He also submits that the allegation of influencing the proceeding by him is only bald allegation without there being any substance to the same. He drew the attention of this court that the application filed by the respondent for divorce was fixed for 15.06.2016 for the evidence and affidavit on oath have been produced by him on the said date, but the applicant knowingly did not appear before the court below on 15.06.2016 and 15.07.2016, hence the declared ex-parte the applicant on 09.08.2016 and thereafter the case was filed for evidence on 15.09.2016 and after the evidence, the case was fixed for final arguments on 17.09.2016.

5. After appreciating the rival contentions of both the parties, I am of the view that since the matrimonial matter is pending since, 2015 and the case is at advanced stage for arguments after recording the evidence, it would not be appropriate in the facts of the present case to transfer the matrimonial matter from Jabalpur to Mandla. The applicant is already being represented by an Advocate and she has already filed an application for setting aside the ex-parte proceeding.

6. From perusal of the order-sheet also it can not be inferred that in any manner the non-applicant has influenced the proceedings of the trial of the case.

7. The judgment of the Apex Court in the case of Krishna Veni Nagam Vs. Harish Nigam (Supra) would not be of any aid to the applicant as the proceedings of the matrimonial matter has already reached to the advanced stage and the matter is pending since 2015. Since the applicant is a Bank employee and there is no demand on her part for the travel expenses to attain the proceedings, the said judgment would not apply, therefore, the contention of the petition regarding convenience of the applicant at this stage would not be a relevant consideration. In the case of Anindita Das Vs Srijit Das, reported in (2006) 9 SCC 197 it has been held in para 3 to 5 as under:

"3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by this Court. On an average at least 10 to 15 transfer petitions are on board of each court on each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.

4. This Court is now required to consider each petition on its merit. In this case the ground taken by the wife is that she has a small child and that there is nobody to keep her child. The child, in this case, is six years old and there are grandparents available to look after the child. The respondent is willing to pay all expenses for travel and stay of the petitioner and her companion for every visit when the petitioner is required to attend the Court at Delhi. Thus, the ground that the petitioner has no source of income is adequately met.

5. Except for stating that her health is not good, no particulars are given. On the ground that she is not able to come to Delhi to attend the Court on a particular date, she can always apply for exemption and her application will undoubtedly be considered on its merit. Hence, no ground for transfer has been made out."

The said judgment had been relied by this Court in the case of Preeti Singh Vs Aditya Tanwar MCC No. 1074/2013 decided on 02.09.2015. It has been held that always leniency can not shown in favour of the applicant/wife and convenience alone is not the criteria. In the present case the wife is already being represented in the matrimonial matter and the case has reached at the advanced stage.

8. In view of the above discussions, I do not find any case for transfer of the matrimonial proceedings from the Family Court, Jabalpur to Mandla. The petition is dismissed accordingly. However, this Court expects that the application for setting aside the ex-parte proceeding will be considered and decided in accordance with law taking into consideration the contentions raised by the applicant regarding the explanation given by her for her non-appearance on the said date sympathetically and the applicant will be given all reasonable opportunity to defend herself in the pending proceedings. Learned counsel for the non-applicant has clearly stated that non-applicant will fully co-operate in the proceeding and no inconvenience of any kind would be caused to the applicant during the trial of the suit.

9. With the aforesaid observation the present petition for transfer of the matrimonial matter is dismissed without any cost.