

Rajasthan High Court

Anuradha W/O Sh.Sameer Haldhani ... vs Sameer Haldani S/O Shri Kamlesh ... on 13 August, 2021

Bench: Rameshwar Vyas

HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR S. B. Civil Transfer
Application No. 94/2020

1. Smt. Anuradha Haldhani W/o Sh. Sameer Haldhani D/o Late Sh. Murari Lal Sain, Aged About 43 Years, Presently Resident Of 83/55, Behind Jai Ambe Public School, Mitra Nagar, Raatidang, Vaishali Nagar, Ajmer (Raj.)- 305008

2. Amit Sain S/o Late Sh. Murari Lal Sain, R/o 83/55, Behind Jai Ambe Public School, Mitra Nagar, Raatidang, Vaishali Nagar, Ajmer (Raj.)-305008

3. Tinku Kaushal S/o Sh. Sita Ram Kaushal, C/o Amit Sain, R/o 83/55, Behind Jai Ambe Public School, Mitra Nagar, Raatidang, Vaishali Nagar, Ajmer (Raj.)-305008

4. Pradeep Verma S/o Sh. Premnarayan Verma, R/o Panchsheel Vihar, Behind Gulmohar Garden, Ajmer Road, Bhankrota, Jaipur.

----applicants Versus Sameer Haldhani S/o Shri Kamlesh Haldhani, Aged About 49 Years, R/o 59, Marudhar Nagar, D.C.M., Ajmer Road, Jaipur.

----non-applicant

For applicant(s) : Mr. Vivek Goyal
For non-applicant(s) : Mr. Rajneesh Gupta

HON'BLE MR. JUSTICE RAMESHWAR VYAS

Order

August 13, 2021

The instant transfer application under Section 24 of the Code of Civil Procedure, 1908 has been preferred by the applicant-wife seeking transfer of the petition for restitution of conjugal rights filed under Section 9 of the Hindu Marriage Act, 1955 (afterwards referred to as "the Act of 1955") read with Section 7 of the Family Court Act and Section 151 of C.P.C., by the non-applicant

-husband bearing Case No. 744/2020 titled as "Sameer Haldhani (2 of 7) [CTA-94/2020] Vs. Smt. Anuradha Haldhani & Ors." from Family Court No. 1, Jaipur Metropolitan (First) to Family Court, Ajmer.

Brief facts of the case are that the marriage between the applicant No. 1 and non-applicant was solemnized on 17.04.2009 at Ajmer in accordance with Hindu rites; out of said wedlock, the applicant-wife has given birth to a baby child, viz. Ms. Yashasvi on 29.07.2012. The applicant-wife alleged that she was treated with cruelty in connection with dowry demands. She was expelled from matrimonial home with her 8 years daughter on 12.07.2020. She is residing with her parents. She is housewife having no independent source of income for maintaining herself and her daughter. An FIR has been lodged on the complaint filed by the applicant-wife under Sections 498-A, 406, 120-B, 323 & 354(B) I.P.C. and Section 4/6 of the Dowry Prohibition Act at Ajmer. She has also filed an application under Section 125 Cr.P.C. against the non-applicant-husband in the Family Court, Ajmer on 01.09.2020. She has also filed an application under the provisions of Protection of Women from Domestic Violence Act, 2005 against the non- applicant-husband and her in-laws in the Court of Judicial Magistrate No. 3, Ajmer on 01.09.2020. All the above three proceedings are pending at Ajmer. The non-applicant-husband has filed an application under Section 9 of the Act of 1955 against the applicant-wife in the Family Court No. 1, Jaipur Metropolitan seeking decree of restitution of conjugal rights, which is registered as Case No. 744/2020, in which show cause notice was issued to the applicant-wife on 17.08.2020. In compliance of the notice, she appeared before the Family Court No. 1, Jaipur on 16.09.2020, on which date, when the applicant-wife was coming to the Court, the non-applicant-husband stopped her way with (3 of 7) [CTA-94/2020] some mischievous persons and threatened her. The non-applicant has deliberately filed the above application on fictitious grounds just to harass and humiliate the applicant-wife. The applicant- wife is helpless to attend and contest the matter in the Family Court No. 1, Jaipur as she is having 8 years old daughter, who is residing with her. On the above grounds, the present transfer application has been filed by the applicant-wife.

In reply to the transfer application, the factum of marriage of the parties has been admitted by the non-applicant but rest of the averments made in the application have been denied. It is submitted that a petition is pending for custody of minor daughter, viz. Ms. Yashasvi before the Family Court, Ajmer at the instance of the non-applicant. The non-applicant is always ready and willing to discharge matrimonial obligations and to take care of upbringings of his daughter and to maintain his wife also. Since it was the second marriage between the parties, therefore, no question arises for any dowry demand. The daughter of the non- applicant was studying in Bright Land Senior Secondary Girls School, Vaishali Nagar, Jaipur in Class - III. The non-applicant was regularly making payment of school fees and conveyance charges of his daughter and is taking care of education of his daughter. The non-applicant is always ready and willing to keep his wife with him along with minor daughter. The criminal proceedings initiated by the applicant-wife against the non- applicant are merely pressure tactics. The applicant-wife left the matrimonial house at Jaipur and the spouse last resided together at Jaipur, therefore, the Court at Jaipur is having jurisdiction to try the matter relating to restitution of conjugal rights. It is very difficult for the non-applicant to move from Jaipur to Ajmer on (4 of 7) [CTA-94/2020] each and every date of hearing. The number of petitions have been filed by the applicant-wife just in order to humiliate the non- applicant. On these premises, the non-applicant-husband has prayed to dismiss the transfer application filed by the applicant- wife.

After the arguments of the learned counsel for the parties were heard and the order was reserved, the applicant has filed rejoinder to the reply filed by the non-applicant on 10.08.2021, which is taken on record.

Learned counsel for the applicant-wife submitted that the applicant-wife has no source of income and she is residing at Ajmer with her parents. Two criminal proceedings and one quasi criminal proceedings under Section 125 Cr.P.C. are pending against the non-applicant at Ajmer. The non-applicant himself has filed the application seeking custody of their minor daughter at Ajmer. In the circumstances, the balance of convenience lies in favour of the applicant-wife and therefore, the applicant prayed for transfer of petition for restitution of conjugal rights pending in the Family Court No. 1, Jaipur Metropolitan (First) to Family Court, Ajmer.

Learned counsel for the applicant-wife has relied on the following judgments :-

- (1) 2001 (10) SCC 41 : Sumita Singh Vs. Kumar
Sanjay and another
- (2) (2005) 11 SCC 394 : Neelam Pravin Singh

Bhadoria Vs. Pravin Singh Ramakant Bhadoria (3) 2004 WLC Raj (U.C.) 257 : Sunita Vs. Om Prakash (5 of 7) [CTA-94/2020] (4) (2001) 10 SCC 449 : Anuradha Dalal Vs. Rohit Dalal (5) 2017 (1) WLC (SC) Civil 660 : Krishna Veni Nagam Vs. Harish Nagam (6) Transfer Petition (Civil) No. 455 of 2020 :

Neetu Yadav Vs. Sachin Yadav (decided on 30.09.2020) On the other hand, learned counsel for the non-applicant submitted that false allegations have been levelled by the applicant-wife in the criminal proceedings initiated against the non-applicant. The applicant-wife is playing pressure tactics on the non-applicant. The non-applicant is ready to bear the expenses of her traveling as the Court at Jaipur only has jurisdiction to hear and decide the application filed under Section 9 of the Act of 1955, which has yet not been replied by the applicant-wife. The minor daughter is presently pursuing her study at Jaipur, the fees of which is being borne by the non- applicant. The non-applicant, therefore, prayed for dismissal of the transfer application filed by the applicant-wife.

Having considered the rival submissions made by learned counsel for the parties and after perusal of the record, this Court has to decide as to whether the balance of convenience lies in favour of the applicant-wife or not.

At this stage, it is pertinent to mention that the transfer application is required to be decided on the basis of facts and circumstances of each case, hence, the judgments cited by the learned counsel for the applicant cannot be made basis as a precedent to infer that the balance of convenience always lies in (6 of 7) [CTA-94/2020] favour of the wife. Other relevant factors have to be taken into consideration while deciding the transfer application.

It is not in dispute that the marriage between the parties was solemnized on 17.04.2009 at Ajmer. It is also not in dispute that out of the said wedlock, the applicant-wife gave birth to a baby child, viz. Ms. Yashasvi on 29.07.2012, who is now more than 9 years old. It is also not in dispute that the non-applicant has filed the application under Section 25 of the Guardianship and Wards Act, 1890 (afterwards referred to as "Act of 1890") at Ajmer, a copy of which is also on record. It is also not in dispute that viz. Ms. Yashasvi is in custody of the applicant-wife. The question regarding her present place of schooling need not to be decided in this petition and the same will be decided by the concerned Family Court. It is also not in dispute that two criminal cases and one quasi criminal proceedings under Section 125 Cr.P.C., initiated by the applicant-wife against the non-applicant-husband, are pending at Ajmer, in which the non-applicant has to come at Ajmer as and when required. It is also not in dispute that the non-applicant has to attend the Family Court at Ajmer for pursuing the application under Section 25 of the Act of 1890. The correctness of allegations levelled in the proceedings initiated under the criminal law as also averments made in the application filed under Section 9 of the Act of 1955, which is sought to be transferred by the applicant-wife herein, are not the subject matter of this transfer application. The application under Section 9 of the Act of 1955 has been filed at the instance of the non- applicant, who in comparison to his wife, is more capable to travel from Jaipur to Ajmer, which is situated at the distance of around 140 kms. It would be in the interest of both the parties that their (7 of 7) [CTA-94/2020] matrimonial dispute is settled expeditiously at a suitable place in a healthy atmosphere so that future life of the parties as also welfare of the minor daughter is not adversely affected. In the present case, the place of litigation should not be made an issue by the non-applicant because the applicant-wife is a lady and having no source of income for maintaining herself and her daughter. There are already multiple proceedings pending between the parties in the Courts at Ajmer.

In view of the above, this Court is of the opinion that in the instant case, the balance of convenience lies in favour of the applicant-wife in comparison to inconvenience caused to the non-applicant-husband in case the proceedings are transferred from Jaipur to Ajmer.

Resultantly, the present transfer petition is allowed. The Case No. 744/2020 titled as "Sameer Haldhani Vs. Smt. Anuradha Haldhani & Ors." pending in the Family Court No. 1, Jaipur Metropolitan (First) is ordered to be transferred to the Family Court, Ajmer.

Let the parties may appear before the Family Court, Ajmer on 13.09.2021 and thereafter, the Family Court, Ajmer would regulate the hearing.

A copy of this order be sent to the Family Court No. 1, Jaipur Metropolitan (First) as well as Family Court, Ajmer for information and necessary compliance.

(RAMESHWAR VYAS),J INDER NEBHWANI/ Powered by TCPDF (www.tcpdf.org)