

D.B.Civil Special Appeal No.1/2014

Smt.Suman @ Ragini V/s Rohit Kumar Alariya

5.5.2014

Hon'ble the Chief Justice Mr.Amitava Roy
Hon'ble Mr.Justice Vijay Bishnoi

Mr.N.K.Rastogi for the appellant.

In challenge is the judgment and order dated 28.10.2013 rejecting the application filed by the appellant-petitioner seeking transfer of the proceedings i.e. civil misc. case no.350/2012 under section 13 of the ***Hindu Marriage Act, 1955*** (for short, hereinafter referred to as “the Act”) pending before the learned Family Court No.1, Jodhpur to the Court of the learned District Judge, Churu.

We have heard Mr.N.K.Rastogi, learned counsel for the appellant-petitioner.

The facts in short relevant for the purpose of instant adjudication are that the parties are married, but have yet no children. Alleging cruelty stemming from persistent demands of dowry resulting in forcible ouster from matrimonial home, the appellant-petitioner has instituted a proceeding for divorce under section 13 of the Act in the Court of the learned District Judge, Churu, which is pending. The respondent-husband as well has filed a petition before the learned Family Court No.1, Jodhpur seeking dissolution of the marriage between the parties. This proceeding is also pending. Situated thus, the appellant-petitioner filed an application before this Court under section 24 of the Code of Civil

Procedure for transferring the proceedings of civil misc. case no.350/2012 pending before the learned Family Court No.1, Jodhpur to the Court of the learned District Judge, Churu. By the judgment and order impugned, the learned Single Judge has declined to grant the prayer.

Mr.Rastogi argued that the appellant being a young lady not only it would be seriously inconvenient for her to travel from Churu to Jodhpur over night, it would be highly risky as well and thus, the impugned judgment and order ought to be interfered with. The learned counsel has submitted that though the respondent husband has offered to meet the expenditure of two persons for her (appellant-petitioner) visit to Jodhpur in connection with the said proceeding, the same *per se* does not take care of her other difficulties and thus, balancing the conveniences and inconveniences of both the parties, the learned Single Judge ought to have allowed the petition for transfer.

Upon hearing the learned counsel for the parties and on a consideration of the materials on record and more particularly the reasons recorded in the impugned judgment and order, we are not inclined to intervene. True it is that in adjudicating a petition for transfer of a proceeding laid by the wife in matrimonial matters, the Courts do adopt a relatively more considerate approach for the applicant, the order to be passed essentially has to be founded on a delicate balance of several factors bearing on the mutual conveniences and inconveniences of the parties. As the facts

reveal, the respondent-husband has offered to meet the expenditure of the appellant-petitioner and another person presumably who would escort her in connection with her visit for the proceedings at Jodhpur. The parties, to reiterate, do not have any children. Apart from pleading that the distance between the two stations is about 450 kms. and that she would have to travel over night, no other ground has been urged to demonstrate any overwhelming inconvenience, inexpediency or undesirability of such journey. As recorded by the learned Single Judge, the respondent-husband is in service with a private insurance company and that it would be formidably difficult for him to attend the Court at Churu by taking leave time and again.

The learned Single Judge, as the impugned judgment would reveal, on carefully balancing the pros and cons of the matter has rightly decided to decline the prayer for transfer of the proceedings from the learned Family Court No.1, Jodhpur to the Court of learned District Judge, Churu. We see no cogent or convincing reason to over turn the view taken.

The appeal therefore lacks in merit and is dismissed.

(Vijay Bishnoi)J.

(Amitava Roy)CJ.

Parmar