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Smt. Pratiibha
V.
Dharmendra Raje

22/05/2017

None for the applicant.

Shri Narottam Sharma, counsel for the respondent.

This application under Section 24 of CPC has been filed for transfer of Case No.15/2012 (Hindu Marriage Act) filed under Section 131 of Hindu Marriage Act which is pending before the Court of Second Additional Sessions Judge, Shivpuri to Family Court, Gwalior.

It is mentioned in the application that on the report of the applicant, FIR in Crime No.1075A/2011 has been registered by Mahila Police Station, Parav, Gwalior and the case is pending before the Court of JMFC, Gwalior. Similarly, the applicant has also filed an application under the Protection of Women from Domestic Violence Act against the respondent which is also pending in the Court of JMFC, Gwalior. The applicant has also filed an application under Section 9 of Hindu Marriage Act for restitution of conjugal rights which is pending before the Court of Principal Judge, Family Court, Gwalior. It is further mentioned that the application filed by the applicant under Section 125 of CrPC is also pending in the Court of Additional Principal Judge, Family Court, Gwalior. It is submitted that the respondent has filed an application under Section 13 of Hindu Marriage Act for grant of divorce which is pending before the Court of IInd Additional Sessions Judge, Shivpuri. It is submitted that the applicant has a minor son aged about 1 year and the respondent is also pressurizing the applicant to enter into

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compromise. On 04/01/2013, the applicant had gone to Shivpuri to attend the case where she was abused and a report was also made to the police on 04/01/2013. Thus, this petition for transfer of the Case No.15/2012 (Hindu Marriage Act) pending in the Court of IInd Additional Sessions Judge, Shivpuri to the Family Court, Gwalior has been filed.

None appears for the applicant.

Heard the counsel for the respondent.

This Court by order dated 11/03/2014 had stayed the further proceedings in Case No.15/2012 pending in the Court of IInd Additional District Judge, Shivpuri and, thus, it is clear that no proceedings must have been taken place so far.

As it is evident from the application that several cases have been instituted by the applicant against the respondent which are pending at Gwalior including a petition under Section 9 of the Hindu Marriage Act whereas the respondent has filed a petition under Section 13 of the Hindu Marriage act for grant of divorce. If the petition under Section 9 of Hindu Marriage Act and the petition under Section 13 of the Hindu Marriage Act are tried by two different Courts, then the possibility of contradictory judgments cannot be ruled out.

Considering the fact that at least four cases have been instituted by the applicant against the respondent which are pending at Gwalior coupled with the fact that a petition under Section 9 of Hindu Marriage Act is pending at Gwalior, this Court is of the view that the Case

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No.15/2012 filed by the respondent under Section 13 of the Hindu Marriage Act which is pending in the Court of IInd Additional District Judge, Shivpuri should be transferred to the Family Court, Gwalior in order to avoid any contradictory judgments in the petition filed under Section 9 of the Hindu Marriage Act as well as under Section 13 of the Hindu Marriage Act.

The Supreme Court in the case of **Krishna Veni Nigam v. Harish Nigam** by order dated **09/03/2017** passed in **Transfer Petition(C) No.1912/2014** had observed as under:-

"18. We, therefore, direct that in matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons.

The safeguards can be:-

- i) Availability of video conferencing facility.
- ii) Availability of legal aid service.
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.
- iv) E-mail address/phone number, if any, at which litigant from out station may communicate.

19. We hope the above arrangement may, to an extent, reduce hardship to the litigants as noted above in the Order of this Court dated 9th January, 2017. However, in

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the present case since the matter is pending in this Court for about three years, we are satisfied that the prayer for transfer may be allowed. Accordingly, we direct that proceedings in Case No.179A/2013 under Section 13 of the Act titled "Harish Nagam vs. Krishna Veni Nagam" pending on the file of II Presiding Judge, Family Court, Jabalpur, Madhya Pradesh shall stand transferred to the Family Court, Hyderabad, Andhra Pradesh. If the parties seek mediation the transferee court may explore the possibility of an amicable settlement through mediation. It will be open to the transferee court to conduct the proceedings or record evidence of the witnesses who are unable to appear in court by way of video conferencing. Records shall be sent by court where proceedings are pending to the transferee court forthwith."

Considering the totality of the circumstances, it is directed that the Case No.15/2012 pending in the Court of IInd Additional District Judge, Shivpuri is transferred to the Family Court, Gwalior.

With the aforesaid observations, the application is **allowed.**

(G.S.Ahluwalia)
Judge