

**IN THE HIGH COURT OF MADHYA
PRADESH**

**AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 19th OF OCTOBER, 2023

MISC. PETITION No. 2243 of 2022

BETWEEN:-

**VIKAS GUPTA S/O BHEEMSHANKAR GUPTA,
AGED ABOUT 43 YEARS, OCCUPATION:
SERVICE MAIN ROAD, ATAL CHOWK, WARD
NO. 2, PANSEMAL, TEHSIL PANSEMAL.
(MADHYA PRADESH)**

.....PETITIONER

SHRI CHETAN JAIN, ADVOCATE

AND

**SMT. SHEETAL W/O VIKAS GUPTA
THROUGH CHANDULAL GUPTA, AGED
ABOUT 42 YEARS, OCCUPATION: NOT
KNOWN GRAM GHOTI, TALUKA IGATPURI,
DISTRICT NASIK (MAHARASHTRA)**

.....RESPONDENT

NONE FOR RESPONDENT.

*This petition coming on for order this day, the court passed the
following:*

ORDER

1] None for the respondent despite service of notice. On 11.09.2023 also no one appeared on behalf of the respondents despite service of notice.

2] The matter is heard finally.

3] This miscellaneous petition has been filed under Article 227 of the Constitution of India against the order dated 9.3.2022 passed by the First District Judge, Sendhwa District Barwani in RCS-HM.No.9/2018; whereby, the application filed by the respondent/wife dated 15.12.2021(Annexure P-4) for stay of suit, has been allowed partially, and it is directed that till the respondent/wife's petition filed under Section 9 of the Hindu Marriage Act (hereinafter to be referred to "Act of 1955") for restitution of conjugal rights pending before the Civil Court Senior Division, Nasik, Maharashtra is decided, the further proceedings of the present case filed by the petitioner under Section 13(1) (ia) (ib) of the Act of 1955, shall remain stayed.

4] In brief facts of the case are that the marriage of the petitioner/husband and respondent/wife was solemnised on 23.11.2008, however due to matrimonial discord an application for divorce was filed by the petitioner on 21.03.2018 (Annexure P/1) in which written statement has already been filed by the respondent on 18.6.2019 (Annexure P/2), and the affidavit under Order 18 Rule 4 of the Code of Civil Procedure, 1908 has already been filed by the

petitioner/husband, and the respondent was given last opportunity to cross examine the petitioner's witness on 30.11.2021. However, instead of cross examining the witness, on the next date an application dated 15.12.2021 was filed by the respondent/wife to the fact that she has already filed a petition for restitution of conjugal rights under Section 9 of Act of 1955 in the court at Nahsik, Maharashtra, and thus, till the aforesaid application is decided finally, further proceedings in the present case which relates to divorce be stayed. The said application has been allowed vide order dated 9.3.2022, and being aggrieved, this miscellaneous petition has been filed by the petitioner.

5] Counsel for the petitioner has drawn attention of this Court to the application filed by the respondent wherein she has stated that either the case be stayed or it may be transferred to the Civil Court at Nasik where the respondent has filed an application under Section 9 of the Act of 1955, and the learned judge of the Family Court has although rejected the claim of the respondent to transfer this case to Civil Court, Nasik, however, the Court opined that since the restitution of conjugal right is more important aspect then the divorce, hence, it would appropriate that the present divorce application be stayed.

6] Counsel for the petitioner has also drawn attention of this Court to Section 21 (A) of the Act of 1955 which provides powers to transfer the case under certain circumstances.

7] Counsel for the petitioner has also relied upon the decision of the Coordinate Bench of this Court in the case of **Balvir Singh Gurjar @ Rinku Vs. Nitu reported as 2015(4) MPLJ 184** in which the Court has held that the provision of Section 9 of the Act of 1955 would also be attracted under Section 21(A) of the Act of 1955 which refers to Sections 10 and 13 of the Act of 1955 only. Thus, it is submitted that the only course available to the Court was to transfer the case under law which has been filed by the respondent/wife, and not to stay the further proceedings of the divorce petition which was filed earlier in time than the application for restitution of conjugal rights which was filed on 30.11.2021, and the divorce petition filed on 21.03.2018. Thus, it is submitted that the impugned order dated 9.3.2022 be set aside, and the trial Court may be directed to decide the matter on merits.

8] The aforesaid submission of counsel for the petitioner are not rebutted as there is no one to oppose the miscellaneous petition despite service of notice to the respondent.

9] Heard. On perusal of the record, and on consideration of the submission advanced by the counsel for the petitioner, this Court finds that so far as the application filed by the respondent/wife for stay/transfer of the case is concerned, it has been filed u/s. 13(1) (ia) (b)(iii) of Hindu Marriage Act, 1955. It is surprising that how an application for transfer/stay of suit can be filed under the aforesaid provisions of Hindu Marriage Act which refers to the divorce only.

What is more surprising is that this application has also been entertained and allowed by the learned judge of the Family Court. In the considered opinion of this court, this practice of filing interlocutory applications either without referring to any provision of law or under wrong provision of law has to be discouraged, as it is seen that such applications are freely filed and entertained in the trial courts in the name of justice, in the garb of an old *cliche* that substance of an application is to be seen rather than its heading or nomenclature, but this *cliche* has done more harm than good to the bar as also to the courts, as such applications make the advocates as also the courts rather careless and inefficient. Thus, the trial courts are directed that instead of deciding such sloppy applications, they must insist that they must be amended/filed under the appropriate provisions of law as the trial court lawyers also owe some responsibility to their clients to know the law.

10] So far as the merits of the case are concerned, this court is of the considered opinion that there was no occasion for the trial Court to stay the proceedings despite the fact that the divorce petition by the petitioner/husband was filed on 21.3.2018, whereas, the petition under Section 9 of the Act of 1955 for restitution of conjugal rights was filed by the respondent/wife on 15.12.2021, thus, neither the remedy under section 10 of CPC i.e., stay of suit nor of Section 21 (A) of the Act of 1955, which refers to transfer of the petitions in certain cases, was available to the respondent wife to seek stay of

the petition filed for divorce filed by the petitioner/husband which could not have been allowed by the learned judge of the trial Court.

11] As a result, the impugned order dated 9.3.2022 (Annexure P-6) is hereby set aside, and the learned judge of the trial Court is directed to decide the divorce petition as expeditiously as possible without any further delay.

12] Accordingly, the **Miscellaneous petition stands allowed and disposed.**

(SUBODH ABHYANKAR)

JUDGE

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