

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

TRANSFER PETITION (CIVIL) No.1264 OF 2019

SHRUTI KAUSHAL BISHT

... PETITIONER

Versus

KAUSHAL R. BISHT

... RESPONDENT

WITH

TRANSFER PETITION (CIVIL) No.2168 OF 2019

ORDER

1. While the first transfer petition is by the wife seeking transfer of the divorce petition filed by the husband in the Family Court at Pune, Maharashtra, the second transfer petition is by the husband seeking transfer of the petition for restitution of conjugal rights filed by the wife before the Family Court, Saket, New Delhi.

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Rachna
Date: 2020.11.06
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2. Heard the learned counsel on both sides.

3. The parties got married on 19.11.2015 at Delhi. It appears that disputes arose between the parties and the parties started living separately from 12.01.2019.

4. The husband filed a petition for divorce on 07.05.2019 before the Family Court, Pune, Maharashtra. After the receipt of notice in the said petition, the wife came up with the Transfer Petition No.1264 of 2019. The transfer petition was filed in the first week of July-2019. Thereafter, the wife, perhaps as a counter-blast, filed a petition for restitution of conjugal rights before the Family Court, Saket, New Delhi on 15.07.2019. Upon receipt of notice in the said petition, the husband has come up with Transfer Petition No.2168 of 2019.

5. The main ground on which the wife seeks transfer of the husband's divorce petition from Pune to New Delhi is that she has no independent source of income and that since the husband is not even paying any maintenance, she is entitled to have the divorce petition transferred to the Family Court in New Delhi, so that the

petition for divorce filed by the husband could be tried together with the petition for restitution of conjugal rights filed by her.

6. The main ground on which the husband opposes the transfer petition filed by the wife, is that his own petition for divorce was prior in point of time and that therefore under Section 21-A(2)(b) of the Hindu Marriage Act, 1955, the petition filed by the wife subsequently, is liable to be transferred to Pune. The husband has offered to bear the expenses for the travel of the wife from Delhi to Pune. The husband further states that his father is suffering from seizures and asthma and that his mother has undergone a cervical biopsy recently and that therefore it is not possible for him to leave his aged parents and travel to Delhi, for conducting the proceedings.

7. I carefully considered the rival contentions.

8. At the outset it should be pointed out that the claim of the petitioner that she is unemployed and that she has no independent source of income and that she is dependent upon her parents, is

not seriously disputed by the husband. On the contrary the husband has attempted to take advantage of the averment of the wife about her being unemployed, by claiming in ground no.(F) that no inconvenience will be caused to the wife, who is unemployed, if she is made to attend the proceedings in Pune. The claim of the wife that she is not receiving any maintenance, is also not disputed. Therefore, considering the fact that the marriage was also solemnized in Delhi, the petition for transfer filed by the wife deserves to be allowed and the one filed by the husband deserves to be dismissed.

9. The learned counsel appearing for the husband places heavy reliance upon Section 21-A(2)(b) of the Hindu Marriage Act, 1955 in support of his contention that a petition filed later in point of time should be transferred to the Court in which a petition under the Act had been filed prior in point of time. But the said contention is misconceived, as can be seen from the plain language of Section 21-A in entirety, which reads as follows:

“21A. Power to transfer petitions in certain cases.- (1) *Where -*

(a) *a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13; and*

(b) *another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State,*

the petitions shall be dealt with as specified in sub-section (2).

(2) *In a case where sub-section (1) applies, -*

(a) *if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;*

(b) *if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.*

(3) *In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.”*

10. Sub-Section (1) of Section 21-A, deals with a situation where one party to a marriage has filed a petition either for judicial

separation under Section 10 or for a decree of divorce under Section 13, before a District Court having jurisdiction and thereafter the other party to the marriage, files a petition either under Section 10 or under Section 13, before the same District Court or in a different District Court in the same State or in a different State. Such types of cases, covered by Sub-section (1), are required to be dealt with, in the manner specified in Sub-section (2). Sub-section (2) of Section 21-A, has no independent existence *de hors* Sub-section (1). A combined reading of Sub-sections (1) and (2) would show that the procedure prescribed by Sub-section (2), applies only to situations covered by Sub-section (1).

11. In the case on hand, what was filed by the husband, first in point of time, was a petition for divorce and hence his case may fit into clause (a) of Sub-section (1) of section 21-A. But unfortunately for him, what was filed by the wife later in point of time was only a petition under Section 9 and not a petition either under Section 10 or under Section 13 of the Hindu Marriage Act. Thus, the wife's petition, though subsequent in point of time, does not fall under

Clause (b) of Sub-section (1) of Section 21-A. As a consequence, Sub-section (1) of Section 21-A has no application to the case on hand, as the pre-conditions stipulated therein are not satisfied.

12. In any case Section 21-A of the Hindu Marriage Act does not divest this Court of the power available under Section 25(1) of the Code of Civil Procedure Code, 1908. In **Guda Vijalakshmi vs. Guda Ramchandra Sekhara Sastry**¹, this Court rejected the contention that the substantive provision contained in Section 25 CPC is excluded by reason of Section 21 of the Hindu Marriage Act, 1955. The words “*subject to the other provisions contained in this Act*” appearing in Section 21 of the Hindu Marriage Act, 1955 were construed by this Court to indicate only those provisions which are inconsistent with any of the provisions of the Act. The only test prescribed in Section 25(1) of the Code of Civil Procedure for the exercise of the power of transfer by this Court is “*expediency for the ends of justice*”. Therefore, the argument of the learned counsel for the husband centering around Section 21-A(2)(b) cannot be

¹ AIR 1981 SC 1143

countenanced. The offer made by the husband to meet the travel expenses for the wife, does not appeal to me, as she may have to travel a distance of more than 1000 km. every time. When the contention that the wife is unemployed and her claim that no maintenance is paid, are not seriously disputed, the offer now made by the husband does not convince me.

13. In view of the above, the Transfer Petition No.1264 of 2019 filed by the wife is allowed and, accordingly, the divorce petition P.A. No.645 of 2019 titled as “**Kaushal R. Bisht** vs. **Shruti Kaushal Bisht**” is hereby transferred from the Family Court Pune, Maharashtra to the Court of Principal Judge, Family Court, Saket, New Delhi and it shall be tried together with the wife’s petition under Section 9 of the Act. Let the records of the case be transferred to the concerned court without delay. The transfer petition No.2168 of 2019 filed by the husband is dismissed.

..... **J.**
(V. RAMASUBRAMANIAN)

New Delhi;
November 06, 2020.