

Court No. - 18

1. **Case :-** TRANSFER APPLICATION (CIVIL) No. - 267 of 2023

Applicant :- Shubhi Saxena

Opposite Party :- Rahul Srivastava And Another

Counsel for Applicant :- Shobhit Saxena

Counsel for Opposite Party :- Vijyant Nigam

2. **Case :-** TRANSFER APPLICATION (CIVIL) No. - 269 of 2023

Applicant :- Shubhi Saxena

Opposite Party :- Rahul Srivastava And Another

Counsel for Applicant :- Shobhit Saxena

Counsel for Opposite Party :- Vijyant Nigam

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Shobhit Saxena, the learned counsel for the applicant and Sri Vijyant Nigam, the learned counsel for the opposite parties.
2. Transfer Application (Civil) No. 267 of 2023 has been filed 'under Section 24 read with under Order 39, Rule 2 of Civil Procedure Code, 1908' seeking transfer of Case No. 353 of 2023, under Section 7 read with Section 25 of Guardian and Wards Act from the Court of Principal Judge, Family Court, Lucknow to the Court of Principal Judge, Family Court, Bareilly.
3. Transfer Application (Civil) No. 269 of 2023 has been filed 'under Section 24 read with under Order 39, Rule 2 of Civil Procedure Code, 1908' seeking transfer of Case No. 4412 of 2022, under Section 13 of Hindu Marriage Act, 1955 from the Court of Principal Judge, Family Court, Lucknow to the Court of Principal Judge, Family Court, Bareilly.
4. The statutory provision regarding transfer of cases is contained in Section 24 of Civil Procedure Code, 1908 and Order XXXIX Rule 2

of Civil Procedure Code deals with grant of temporary injunctions to restrain repetition or continuance of breach. Order XXXIX Rule 2 C.P.C. does not deal with transfer of cases and the mention of Order XXXIX Rule 2 CPC, 1908 in the heading of the application indicates that the application has been prepared in a careless manner, which cannot be appreciated by the Court.

5. The applicant has sought transfer of the case on the ground that the applicant is presently posted is posted as HRM Regional Officer, Bank of Baroda at Bareilly. In the description of the applicant given in the transfer application, she has disclosed that she is a resident of Lucknow.
6. The opposite party no. 1 has filed objections against the transfer applications inter alia stating that the applicant is in a transferable service. The applicant was posted at Faizabad at the time of her marriage, in the year 2020 she was transferred to Sultanpur and in the year 2022 she was again transferred to Bareilly. The applicant can be transferred anywhere in India after every two to three years and in these circumstances, it will be most convenient for the applicant to contest the case at Lucknow which is the place of her permanent residence.
7. The applicant has filed rejoinder affidavits refuting the aforesaid averment and she has stated that she will remain posted at Bareilly for six years. The applicant has annexed an incomplete extract of the transfer policy of the bank and the learned counsel for the petitioner has submitted that clause 4.16 of the transfer policy provides that an officer can be posted anywhere within the region as per the need of the bank. However, the officers who have been in the same city/place/center within a region for six years or above, will be subjected to transfer to another city/place/center within the same region or any other region of the zone, subject to non identification for transfer to another zone.
8. The aforesaid clause merely speaks about continuous posting in a particular region for a period of six years or above and it does not

make any mention that an officer cannot be transferred out of a city within the same reason for a period of six years.

9. The learned counsel for the applicant has placed reliance on an order of the Hon'ble Supreme Court in **Sumita Singh v. Kumar Sanjay & Anr**: (2001) 10 SCC 41, wherein the Hon'ble Supreme Court transferred a suit keeping in view the fact that the wife would be required to travel a distance of about 1100 kilometers for attending the case. In the present case, the applicant is having her permanent address at Lucknow itself and presently she is posted at Bareilly, a place which is at a distance of merely 250 kilometers from Lucknow.
10. The learned counsel for the applicant has submitted that the convenience of the wife has to be considered while deciding the transfer application. No doubt there is force in the submission of the learned counsel for the petitioner that convenience of wife is to be considered by the Court but when the past posting record of the applicant shows that she has been transferred from every city after every two years, the present place of posting of the applicant/wife at Bareilly does not give a good ground for transfer of the case from Lucknow to Bareilly when she is likely to be transferred repetitively in future also and the cases are pending at Lucknow where the applicant's permanent residence is situated and the minor child of the parties, for whose custody a case has been filed at Lucknow, is also residing and studying at Lucknow.
11. The learned counsel for the opposite party has relied upon a decision of the Hon'ble Supreme Court in the case of **Delma Lubna Coelho v. Edmond Clint Fernandes**, 2023 SCC OnLine SC 440, wherein the Hon'ble Supreme Court has observed that : -

“Number of Transfer Petitions are filed in matrimonial cases, primarily by the wives seeking transfer of the matrimonial proceedings initiated by the husband. This Court normally has been accepting the prayer made while showing leniency towards ladies. In Anindita Das v. Srijit Das, (2006) 9 SCC 197, this Court observed that may be this leniency was being misused by women. Hence, each and every case has to be considered on its own merits.”

12. From the aforesaid facts, it appears that the present place of posting of the applicant – wife does not provide a good ground for transfer of the case relating to custody of a minor child who is residing and studying at Lucknow, from Lucknow to Bareilly, more particularly when the applicant's permanent residence is also at Lucknow and she is in a transferable service and she gets transferred very frequently – almost every two to three years. The divorce suit should also be decided by the same Court where custody suit is pending and, therefore, it will not be in the interest of justice to transfer the divorce case as well.
13. Therefore, there appears to be no good ground for transfer of (i) Case No. 353 of 2023, Rahul Srivastava & Anr. v. Smt. Shubhi Saxena, under Section 7 read with Section 25 of the Guardian and Wards Act and (ii) Case No. 4412 of 2022, under Section 13 of Hindu Marriage Act, 1955 from the Court of Principal Judge, Family Court, Lucknow to the Court of Principal Judge, Family Court, Bareilly.
14. Both the applications lack merit and the same are *dismissed*.

(Subhash Vidyarthi J)

Order Date: 17.10.2024

Pradeep/-