

**AFR****Reserved****WWW.LIVELAW.IN****Case :- TRANSFER APPLICATION (CIVIL) No. - 206 of 2021****Applicant :- Smt. Garima Tripathi****Opposite Party :- Suyash Sharma****Counsel for Applicant :- Mehul Khare, Pragya Pandey****Counsel for Opposite Party :- Swetashwa Agarwal****Hon'ble Vivek Varma,J.**

This is a transfer application preferred by the applicant-wife, under Section 24 of the Code of Civil Procedure, 1908. The applicant seeks transfer of pending Petition No. 689 of 2020, Suyash Sharma Vs. Smt Garima Tripathi, under Section 10 read with Section 13(1)(i-a) of the Hindu Marriage Act, 1955 from the Court of the Principal Judge, Family Court, Kanpur Nagar to the Family Court, Prayagraj.

Parties were married according to Hindu rites on 02.06.2017. Shorn of unnecessary details it would be suffice to notice for the purpose of the present transfer application that the applicant and the opposite party, Suyash Sharma, her husband, have turned an estranged couple. Whatever be the issues between them, the opposite party has filed a petition under Section 10 read with Section 13(1)(i-a) of the Hindu Marriage Act, 1955 against the applicant.

The applicant completed her M.B.B.S course in the year 2012 and is currently a resident doctor at Kamla Nehru Memorial Hospital at Prayagraj. The applicant got herself enrolled in the course of Diplomate in Obstetrics and Gynaecology (for brevity hereinafter referred to as "DGO") under the National Association for the Reproductive and Child Health of India- Indian College of Maternal and Child Health on 06.07.2019 at Kamala Nehru Memorial Hospital, Prayagraj. The applicant has also applied for the post of Medical Officer in Kamala Nehru Memorial Hospital to discharge her professional duties after the completion of her diploma. The applicant is getting a monthly stipend of Rs. 10,000/-, out of which she pays the rent, mess fee and electricity bill. It is contended that the applicant being a young woman cannot travel to district Kanpur, which is about 200 Kms. from

district Prayagraj, to defend the proceedings with no one to escort her as she lives alone at Prayagraj.

A detail counter affidavit has been filed by the opposite party. It has been averred in the affidavit that the applicant- wife will stay at Prayagraj for a temporary period, that is, till the completion of her diploma. The instant transfer application has been filed only to delay and extend the divorce proceedings so instituted. It is also averred in the counter affidavit that the opposite party is an employee of Sharma Nursing Home. The opposite party has deposited all the fees of the applicant for the DGO course and is making regular payments to the applicant for her maintenance. It is further asserted that the opposite party is taking care of her old age parents, who are not keeping well. The opposite party also asserts that there is serious threat to his life at Prayagraj.

In the rejoinder affidavit, the applicant has denied the allegations as made in the counter affidavit. It is asserted that the opposite party is the Director of Sharma Nursing Home, Swaroop Nagar, Kanpur. The said nursing home has large number of employees and doctors. The opposite party is working in his own nursing home and can take leave as and when he desires. The father of the opposite party is also an M.D. in Anesthesia who can replace the opposite party, if needed, and also have a battery of staff and domestic help at their residence and, as such, in the absence of the opposite party his family can take good care.

I have considered the rival submissions advanced by the learned counsel appearing for the parties.

It is pertinent to state that there is no straight jacket formula that can be adopted in order to determine the transfer proceedings. It is not a mandatory rule that the transfer applications are always to be transferred for the asking of the wife, but at the same time, the wife, in situations where she is disadvantaged on recognized parameters, for the sake of equity, her interests are to be safeguarded. In the light of the above perception, the expenditure involved in travelling to Kanpur from Allahabad is not very relevant, as that can always be compensated by directing the husband to pay

for the wife's travel. In the instant case, the husband is already willing to pay the travelling cost, but the applicant-wife has no one in her family to escort her on the journey. This has been held to be a good ground for transfer of case as is also evident from Apex Court's decisions in **Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani**, AIR 2009 SC 1374, and **Fatema Vs. Jafri Syed Husain (Parvez)**, AIR 2009 SC 1773. In **Anjali Ashok Sadhwani (supra)** the Hon'ble Supreme Court has held as under:

*“2. Having heard the learned counsel for the parties and after going through the materials on record and considering the fact that the distance between Mumbai, Maharashtra and Indore, Madhya Pradesh is about 900 kms and also considering the fact that the petitioner wife has no one in her family to escort her during her journey from Mumbai to Indore, we feel it proper to transfer the case from Family Court of Indore, Madhya Pradesh to Family Court at Bandra, Mumbai. Accordingly, the case being Petition No. 83 of 2006 stands transferred from Family Court of Indore, Madhya Pradesh to Family Court of Bandra at Mumbai, Maharashtra.”*

In **Fatema (supra)** the Hon'ble Supreme Court has held as under:

*“2. Having heard the learned counsel for the parties and after going through the materials on record and considering the fact that the wife/petitioner is only 22 years of age and, therefore, it would be difficult for her to attend the Court proceedings at Aurangabad from Srinagar.”*

Similarly, the Hon'ble Supreme Court in **Sumita Singh Vs. Kumar Sanjay and anr.**, AIR 2002 SC 396, has held as under:

*"This is a transfer petition by the wife. She seeks the transfer of matrimonial proceedings filed by the husband against her in Ara, Bhojpur to Delhi. It is her case that she is now living and working in Delhi and that she would be unable to travel up and down from Delhi to Ara, a distance of about 1100 Kilometers from Delhi, to defend the matrimonial proceedings. She also states that she has no one with whom she can stay in Ara because her parents are resident of Gurgaon.*

*2. Learned counsel for the husband states that the wife*

*is an educated woman who is doing very well and can, therefore, travel to Ara while the husband is unemployed.*

*3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at, The circumstances indicated above are sufficient to make the transfer petition absolute.*

*4. Accordingly, Matrimonial Case No. 30 of 2000 pending before the VIth Additional District and Sessions Judge, Ara, Bhojpur, Bihar shall stand transferred to the District Judge, Delhi, who shall hear it himself or assign it for hearing to an appropriate forum."*

In matrimonial cases, convenience of the wife is the dominating factor for justifying transfer of a matter.

Now so far as the allegation by the opposite party regarding threat to his life at Prayagraj is concerned, that allegation is not based on any cogent material and as such, the said plea cannot be accepted by this Court.

Having considered the facts and circumstances of the case and in view of the settled legal proposition, the present transfer application is allowed. Petition No. 689 of 2020 (Suyash Sharma Vs. Smt. Garima Tripathi) under Section 10 read with Section 13(1)(i-a) of the Hindu Marriage Act, 1955 pending in the Court of the Principal Judge, Family Court, Kanpur Nagar is transferred to the competent Court at Prayagraj. The Court at Kanpur shall ensure early transmission of the record to district Prayagraj. The transferee Court shall thereafter make it convenient to ensure that the case is disposed of as early as possible within six months of the receipt of the record.

**Order Date:** 25<sup>th</sup> November, 2021.

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