

A

RUCHI RAWAT

v.

PRINCIPAL JUDGE, FAMILY COURT ETAH & ANR.

(Civil Appeal No(s). 5218 of 2022)

B

AUGUST 05, 2022

[S. ABDUL NAZEER AND J.K. MAHESHWARI, JJ.]

Code of Civil Procedure, 1908: s. 25 – Transfer of matters – Power of – Held: In matrimonial matters generally, it is wife’s convenience which must be looked at while considering the transfer – On facts, appellant-wife having no source of income, was residing with her parents in Mathura and was financially and emotionally dependent on them, and being a lady was not in a position to travel all the way from Mathura to Etah in order to prosecute the case filed by respondent no. 2-husband at Etah – Thus, it is just and proper to transfer the suit filed by respondent no.2 u/s. 13 Hindu Marriage Act against the appellant pending before the Principal Judge, Family Court, Etah, Uttar Pradesh to the Principal Judge, Family Court, Mathura, Uttar Pradesh forthwith.

E

N.C.V. Aishwarya v. A.S. Saravana Karthik Sha **Civil Appeal No.4894 of 2022, disposed of on 18.07.2022 – referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5218 of 2022.

F

From the Judgment and Order dated 31.03.2022 of the High Court of Judicature at Allahabad in Transfer Application (Civil) No. 517 of 2018.

Kartikeya Bhargava, Adv. for the Appellant.

G Vaibhav Mishra, Akansh Bansal, Parmanand Gaur, Advs. for the Respondents.

The following Order of the Court was passed:

ORDER

1. Leave granted.

H

2. This appeal is directed against the Order dated 31.03.2022 in Transfer Application (Civil) No.517 of 2018 whereby the High Court of Judicature at Allahabad has rejected the petition filed by the appellant-wife seeking transfer of Original Suit No.23 of 2018 filed by her husband (respondent No.2 herein) before the Principal Judge, Family Court, Etah, Uttar Pradesh to Principal Judge, Family Court, Mathura, Uttar Pradesh.

3. Respondent No.2 had filed Original Suit No.23 of 2018 under Section 13 of the Hindu Marriage Act against the appellant at Etah. The appellant had also filed certain cases against the respondent no.2 at different courts in Mathura and the respondent no.2 had also filed an FIR against the appellant at Etah. The case put forth by the appellant before the High Court is that she being a lady is not in a position to travel all the way from Mathura to Etah in order to prosecute the case filed by the respondent no. 2 at Etah. It is further contended that the appellant has no source of income and she is residing with her parents in Mathura and she is financially and emotionally dependent on them and that she is surviving on the mercy of her parents. It is also alleged that she was threatened by the respondent no.2 and his brother while she was returning from Etah to Mathura after appearing before the Court on 19.02.2018. No doubt, the said allegation was denied by the respondent no.2.

4. It is well-settled that in matrimonial matters generally, it is wife's convenience which must be looked at while considering the transfer. In N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha (Civil Appeal No.4894 of 2022, disposed of on 18.07.2022), it was held as under:

“9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio-economic paradigm in the Indian society,

A generally, it is the wife's convenience which must be looked at while considering transfer."

5. Having regard to the facts and circumstances of the case, we are of the view that it is just and proper to transfer the case filed by respondent no.2 from Etah to Mathura.

B 6. Resultantly, the appeal is allowed. The order passed by the High Court impugned herein is set aside. We direct the transfer of Original Suit No.23 of 2018 pending before the Principal Judge, Family Court, Etah, Uttar Pradesh to the Principal Judge, Family Court, Mathura, Uttar Pradesh forthwith. The Principal Judge, Family Court, Etah, shall send the case record to the transferee court promptly and without any delay.

C 7. The parties are directed to bear their respective costs.

8. Pending application, if any, also stands disposed of.

Nidhi Jain

Appeal allowed.