

Krishna Veni Nagam vs Harish Nigam on 9 March, 2017

Equivalent citations: AIR 2017 SUPREME COURT 1345, 2017 (4) SCC 150, 2017 (2) AJR 462, AIR 2017 SC (CIVIL) 1226, (2017) 2 KER LJ 549, (2017) 1 ORISSA LR 1033, (2017) 2 JCR 142 (SC), (2017) 122 ALL LR 905, (2017) 2 ALL RENTCAS 474, (2017) 1 MARRILJ 126, (2017) 4 MAH LJ 764, (2017) 3 MAD LW 721, (2017) 3 ANDHLD 151, (2017) 3 CIVLJ 614, (2017) 2 DMC 173, (2017) 2 KER LT 593, (2017) 1 WLC(SC)CVL 660, (2017) 2 GAU LT 29, (2017) 2 CAL LJ 55, (2017) 1 CURCC 232, (2017) 2 MARRILJ 122, (2017) 3 MPLJ 344, (2017) 2 ICC 344, (2017) 174 ALLINDCAS 103 (SC), (2017) 2 CIVILCOURTC 294, (2017) 2 HINDULR 66, (2017) 2 RECCIVR 358, (2017) 1 CLR 1013 (SC), (2017) 3 SCALE 471, (2017) 123 CUT LT 1054, 2017 (3) KCCR SN 280 (SC), (2017) 3 BOM CR 62

Author: Adarsh Kumar Goel

Bench: Uday Umesh Lalit, Adarsh Kumar Goel

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL original JURISDICTION

Transfer petition (CIVIL) NO. 1912 OF 2014

Krishna Veni Nagam

...PETITIONER

VERSUS

Harish nagam

...RESPONDENT

J U D G M E N T

ADARSH KUMAR GOEL, J

1. This transfer petition has been filed for transfer of Case No.179A/2013 u/s 13 of the Hindu Marriage Act, 1955 (the Act) titled “Harish Nagam vs. Krishna Veni Nagam” pending on the file of II Presiding Judge, Family Court, Jabalpur, Madhya Pradesh to the Family Court Hyderabad, Andhra Pradesh.

2. Case of the petitioner-wife is that she was married to the respondent- husband in the year 2008 at Kukatpally, Hyderabad. She was blessed with a girl child in 2009. While living in her in-law’s house at Jabalpur, she was ill-treated. She was subjected to mental and physical torture. She suffered

injury on her spinal cord. She left the matrimonial home in 2012.

3. The respondent-husband filed application for restitution of conjugal rights which was later on got dismissed as withdrawn. Thereafter, a divorce petition has been filed at Jabalpur while the petitioner has filed a domestic violence case at Hyderabad. Since the petitioner-wife, along with her minor daughter, is living with her parents, she cannot undertake long journey and contest the proceedings at Jabalpur by neglecting her minor child. She also apprehends threat to her security in attending proceedings at Jabalpur.

4. On 7th January, 2015, notice was issued and stay of proceedings was granted. The matter has been pending in this Court for more than two years.

5. On 9th January, 2017 when the matter came-up for hearing, the following order was passed:

“This petition is filed under Section 25 of the Code of Civil Procedure seeking transfer of proceedings initiated by the respondent under Section 13 of the Hindu Marriage Act at Jabalpur. According to the petitioner, who is the wife of the respondent, she will face acute hardship in contesting the proceedings at Jabalpur as she is living at Hyderabad. The marriage took place at Hyderabad. The petitioner has to look after her minor daughter who is living with her.

Undoubtedly under Section 19 of the Hindu Marriage Act, the petition of the present nature could be filed at the place where the marriage is solemnized or the respondent, at the time of the presentation of the petition, resides or where the parties to the marriage last resided together or where the wife is residing on the date of the presentation of the petition, in case she is the petitioner or in certain situations (as stipulated in clause iv) where the petitioner resides. This Court is flooded with petitions of this nature and having regard to the convenience of the wife transfer is normally allowed. However, in the process the litigants have to travel to this Court and spend on litigation. Question is whether this can be avoided?

We are of the view that if orders are to be passed in every individual petition, this causes great hardship to the litigants who have to come to this Court. Moreover in this process, the matrimonial matters which are required to be dealt with expeditiously are delayed. In these circumstances, we are prima facie of the view that we need to consider whether we could pass a general order to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court. The Court may also pass orders from time to time for further deposit to ensure that the wife is not handicapped to defend the proceedings. In other cases, the husband may take proceedings before the Court in whose jurisdiction the wife resides which may lessen inconvenience to the parties and avoid delay. Any other option to remedy the situation can also be considered.

However, before passing a final order, we consider it necessary to hear learned Attorney General who may depute some law officer to assist this Court.

List the matter on 31st January, 2017.

We also request Mr. C.A. Sundaram, Senior Advocate to assist this Court as amicus curiae. A set of papers may be furnished to the amicus.” (Emphasis added)

6. Thus, the question is whether an order can be passed so as to provide a better alternative to each individual being required to move this Court.

7. We have already noted that large number of transfer petitions of the present nature are being filed in this Court and are being mechanically allowed. Similar observation was made by this Court more than 10 years ago in *Anindita Das v. Srijit Das*[1] “...On an average at least 10 to 15 transfer petitions are on board of each court on each admission day.” It has also been observed in a number of cases that in absence of any male member being available to accompany the wife who is party to matrimonial proceedings to a different place, it may render it “expedient for ends of justice” to transfer proceedings[2].

8. Of course in some cases, it was observed that instead of proceedings being transferred, the husband should pay travel, lodging and boarding expenses of the wife and/or person accompanying for each hearing[3]. This trend has also been followed in other matrimonial disputes, including guardianship dispute, etc.[4]

9. Spirit behind the orders of this Court in allowing the transfer petitions filed by wives being almost mechanically allowing is that they are not denied justice on account of their inability to participate in proceedings instituted at a different place on account of difficulty either on account of financial or physical hardship. Our Constitutional scheme provides for guaranteeing equal access to justice[5], power of the State to make special provisions for women and children[6] and duty to uphold the dignity of women[7]. Various steps have been taken in this direction[8].

10. As noted in the Order dated 9th January, 2017 quoted above, Section 19 of the Act permits proceedings to be filed not only at a place where the wife resides but also at place where marriage is solemnized or the place where the parties last resided together. It is mostly in the said situations that the wife has hardship in contesting proceedings. At the same time, under the law the husband is legally entitled to file proceedings at such places. Territorial jurisdiction of court is statutorily laid down in C.P.C. or other concerned statutes.

11. Accordingly, we have heard Shri C.A. Sundaram, learned senior counsel as amicus curiae. Learned amicus has suggested that Section 19 of the Act should be interpreted to mean that the jurisdiction at the place other than where wife resides being available only at the option of the wife or that such jurisdiction will be available in exceptional cases where the wife is employed and the husband is unemployed or where the husband suffers from physical or other handicap or is looking after the minor child. Even though we are unable to give such interpretation in the face of plain language of statute to the contrary and it is for the legislature to make such suitable amendment as may be considered necessary, we are certainly inclined to issue directions in the interest of justice consistent with the statute.

12. Mr. Nadkarni, learned Addl. Solicitor General has suggested that it will be appropriate to give some directions to meet the situation. He submitted that paramount consideration in dealing with the issue ought to be the interest of justice and not mere convenience of the parties. Thus, where husband files a petition at a place away from the residence of the wife, the husband can be required to bear travel and incidental expenses of the wife, if it is so considered appropriate in the interest of justice. At the same time, if the husband has genuine difficulty in making the deposit, proceedings can be conducted by video conferencing. At least one court room in every district court ought to be equipped with the video conferencing facility. The interest of the minor child has also to be kept in mind along with the interest of the senior citizens whose interest may be affected by one of the parties being required to undertake trips to distant places to face the proceedings. Protracted litigation ought to be avoided by better management and coordination so that number of adjournments can be reduced.

13. We have considered the above suggestions. In this respect, we may also refer to the doctrine of forum non conveniens which can be applied in matrimonial proceedings for advancing interest of justice. Under the said doctrine, the court exercises its inherent jurisdiction to stay proceedings at a forum which is considered not to be convenient and there is any other forum which is considered to be more convenient for the interest of all the parties at the ends of justice. In *Modi Entertainment Network and anr. v. W.S.G. Cricket Pte. Ltd.*[9] this Court observed:

“19. In *Spiliada Maritime* [10] case the House of Lords laid down the following principle:

“The fundamental principle applicable to both the stay of English proceedings on the ground that some other forum was the appropriate forum and also the grant of leave to serve proceedings out of the jurisdiction was that the court would choose that forum in which the case could be tried more suitably for the interest of all the parties and for the ends of justice.” The criteria to determine which was a more appropriate forum, for the purpose of ordering stay of the suit, the court would look for that forum with which the action had the most real and substantial connection in terms of convenience or expense, availability of witnesses, the law governing the relevant transaction and the places where the parties resided or carried on business. If the court concluded that there was no other available forum which was more appropriate than the English court, it would normally refuse a stay. If, however, the court concluded that there was another forum which was *prima facie* more appropriate, the court would normally grant a stay unless there were circumstances militating against a stay. It was noted that as the dispute concerning the contract in which the proper law was English law, it meant that England was the appropriate forum in which the case could be more suitably tried.” Though these observations have been made in the context of granting anti suit injunction, the principle can be followed in regulating the exercise of jurisdiction of the court where proceedings are instituted. In a civil proceeding, the plaintiff is the *dominus litis* but if more than one court has jurisdiction, court can determine which is the convenient forum and lay down conditions in the interest of justice subject to which its jurisdiction may be

availed[11].

14. One cannot ignore the problem faced by a husband if proceedings are transferred on account of genuine difficulties faced by the wife. The husband may find it difficult to contest proceedings at a place which is convenient to the wife. Thus, transfer is not always a solution acceptable to both the parties. It may be appropriate that available technology of video conferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties. We understand that in every district in the country video conferencing is now available. In any case, wherever such facility is available, it ought to be fully utilized and all the High Courts ought to issue appropriate administrative instructions to regulate the use of video conferencing for certain category of cases. Matrimonial cases where one of the parties resides outside court's jurisdiction is one of such categories. Wherever one or both the parties make a request for use of video conference, proceedings may be conducted on video conferencing, obviating the needs of the party to appear in person. In several cases, this Court has directed recording of evidence by video conferencing[12].

15. The other difficulty faced by the parties living beyond the local jurisdiction of the court is ignorance about availability of suitable legal services. Legal Aid Committee of every district ought to make available selected panel of advocates whose discipline and quality can be suitably regulated and who are ready to provide legal aid at a specified fee. Such panels ought to be notified on the websites of the District Legal Services Authorities/State Legal Services Authorities/National Legal Services Authority. This may enhance access to justice consistent with Article 39A of the Constitution.

16. The advancement of technology ought to be utilized also for service on parties or receiving communication from the parties. Every district court must have at least one e-mail ID. Administrative instructions for directions can be issued to permit the litigants to access the court, especially when litigant is located outside the local jurisdiction of the Court. A designated officer/manager of a district court may suitably respond to such e-mail in the manner permitted as per the administrative instructions. Similarly, a manager/ information officer in every district court may be accessible on a notified telephone during notified hours as per the instructions. These steps may, to some extent, take care of the problems of the litigants. These suggestions may need attention of the High Courts.

17. We are thus of the view that it is necessary to issue certain directions which may provide alternative to seeking transfer of proceedings on account of inability of a party to contest proceedings at a place away from their ordinary residence on the ground that if proceedings are not transferred it will result in denial of justice.

18. We, therefore, direct that in matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards

can be:-

- i) Availability of video conferencing facility.
- ii) Availability of legal aid service.
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.
- iv) E-mail address/phone number, if any, at which litigant from out station may communicate.

19. We hope the above arrangement may, to an extent, reduce hardship to the litigants as noted above in the Order of this Court dated 9th January, 2017. However, in the present case since the matter is pending in this Court for about three years, we are satisfied that the prayer for transfer may be allowed. Accordingly, we direct that proceedings in Case No.179A/2013 under Section 13 of the Act titled “Harish Nagam vs. Krishna Veni Nagam” pending on the file of II Presiding Judge, Family Court, Jabalpur, Madhya Pradesh shall stand transferred to the Family Court, Hyderabad, Andhra Pradesh. If the parties seek mediation the transferee court may explore the possibility of an amicable settlement through mediation. It will be open to the transferee court to conduct the proceedings or record evidence of the witnesses who are unable to appear in court by way of video conferencing. Records shall be sent by court where proceedings are pending to the transferee court forthwith.

20. The Registry to transmit a copy of this order to the courts concerned. A copy of this order be sent to all the High Courts for appropriate action.

21. We place on record our appreciation for the valuable assistance rendered by Mr. Atmaram N.S. Nadkarni, learned Additional Solicitor General and Mr. C.A. Sundaram, learned Senior Advocate.

21. The transfer petition is disposed of accordingly.

.....J. [ADARSH KUMAR GOEL]J. [UDAY UMESH LALIT] NEW DELHI;

MARCH 9, 2017.

[1] [2] (2006)9 SCC 197 [3] Mona Aresh Goel v. Aresh Satya Goel (2000) 9 SCC255; Lalita A. Ranga v. Ajay Champalal Ranga (2000) 9 SCC 355; Deepa v. Anil Panicker (2000) 9 SCC 441; Archana Rastogi v. Rakesh Rastogi (2000)10 SCC 350; Leena Mukherjee v. Rabi Shankar Mukherjee (2002) 10 SCC 480; Neelam Bhatia v. Satbir Singh Bhatia (2004) 13 SCC 436; Soma Choudhury v. Gourab Choudhury (2004) 13 SCC 462; Rajesh Rani v. Tej Pal (2007) 15 SCC 597; Vandana Sharma v. Rakesh Kumar Sharma (2008)11 SCC 768; and Anju Ohri v. Varinder Ohri (2007) 15 SCC 556.

[4] [5] Premrata Singh v. Rita Singh (2005) 12 SCC 277 [6] Gana Saraswathi v. H. Raghu Prasad (2000) 10 SCC 277 [7] [8] Article 39A of the Constitution of India, 1950. [9] [10] Article 15(3) of the Constitution of India, 1950. [11] Article 51-A(e) of the Constitution of India, 1950.

[12] [13]. In Articles 243-D and 243-T of the Constitution, provision has been made for reservation for women in Panchayats and Municipalities by 73rd and 74th Amendments. Need for affirmative action consistent with the Article 15(3) of the Constitution has led to several measures being adopted by the legislature, executive as well as the judiciary to advance gender justice. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) underlines the awareness of the international commitments on the subject which has inspired several judgments of this Court [Vishaka v. State of Rajasthan (1997) 6 SCC 241; Arun Kumar Agrawal v. National Insurance Co. Ltd. (2010) 9 SCC 218; Charu Khurana v. Union of India (2015) 1 SCC 192; Prakash v. Phulavati (2016) 2 SCC 36; Danial Latifi v. Union of India (2001) 7 SCC 740; Voluntary Health Assn. of Punjab v. Union of India (2013) 4 SCC 1 and; Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa (1987) 2 SCC 469. It was observed in Voluntary Health Assn. as under:

“20. It would not be an exaggeration to say that a society that does not respect its women cannot be treated to be civilised. In the first part of the last century Swami Vivekanand had said:

‘Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind.’” [14] [15] (2003) 4 SCC 341 [16] [17] Spiliada Maritime Corpn. V. Cansulex Ltd. (1986) 3 All ER 843 [18] [19] Kusum Ingots & Alloys Ltd. v. Union of India and anr. (2004) 6 SCC 254 para 30 [20] [21] State of Maharashtra etc. v. Dr. Praful B. Desai etc. (2003) 4 SCC 601; Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and anr. (2005) 3 SCC 284; Budhadev Karmaskar (4) v. State of West Bengal (2011) 10 SCC 283; Malthesh Gudda Pooja v. State of Karnataka and ors.

(2011) 15 SCC 330