



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Transfer Appl. No. 144/2018

Sheela Payak W/o Mohit Binwara, Aged About 31 Years, D/o Shri Kailash Chandra Payak, Caste - Dhobi, R/o - B-236, Shashtri Nagar, Bhilwara

----Petitioner

Versus

Mohit Binawara S/o Shri Madanlal Binawara, Aged About 38 Years, B/c - Dhobi, R/o - B-3/276, Sudarshna Nagar, Ward No. 36, Bikaner ( Raj.). Second Address - J-32, Deepak Marg, Adarsh Nagar, Jaipur. ( Raj.)

----Respondent

For Petitioner(s) : Dr. Shailendra Kala  
For Respondent(s) : Ms. Yogita Mohnani

**JUSTICE DINESH MEHTA**

**Judgment**

**10/05/2019**

The present transfer application under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of the Divorce Petition (No. 160/2018 titled as " Mohit Binawara Vs. Sheela Payal" under Section 5(1) and 13 of the Hindu Marriage Act, filed by the respondent-husband, which is pending before the Family Court No.1, Bikaner to the Family Court, Bhilwara.

Learned counsel for the petitioner submits that the wife has already filed two cases; one under Section 125 of the Cr. P.C. and another under Section 498A of the IPC, which are pending in the competent courts at Bhilwara, whereas the respondent - husband has filed the present divorce petition under Section 13 of the Family Court Act at Bikaner.



Pointing out the predicament of the petitioner, the learned counsel for the petitioner submits that the petitioner is residing at Bhilwara with her 5 years old daughter for whom taking the travelling upto Bikaner to participate in the proceedings will be troublesome task. Learned counsel for the petitioner relied upon the judgment rendered by this Court in the case of Smt. Vinita Vs. Himanshu, reported in AIR 2017 Rajasthan 102.

In the facts situation obtaining in the present case, I am of the considered view that, if the matter is transferred to Bhilwara from Bikaner, it would be not only convenient to the petitioner – wife but also to the respondent- husband, who is already contesting the cases filed by the petitioner – wife at Bhilwara.

My aforesaid views are fortified from the judgment rendered by this Court in the case of Vinita Vs. Himanshu (supra). It will not be out of context to quote relevant excerpts from the judgment of Smt. Vinita Vs. Himanshu (supra), wherein this Court has held as under:-

“It is, therefore, felt imperative to examine and explore the necessary principles governing transfer applications, filed by families, entangled in forensic fights, while invoking powers conferred upon this Court by Section 24 of the Code of Civil Procedure, 1908.

According to this Court, the provisions of Section 24 of the Code provides a great deal of discretion in the court, however, such discretion is required to be exercised on the basis of sound principles. It is true that the discretionary power, more particularly, the jurisdiction in relation to transfer of cases, can not be imprisoned or bound within a straight jacket or castiron formula, uniformly applicable to all situations, yet the courts are required to be mindful of the fact that the power to transfer a case must be exercised with due care, caution and circumspection.

Keeping in mind the provisions and mandate of Sections 24 and 25 of the Code, various judicial pronouncements have laid down broad propositions as



to what may constitute a ground for transfer of a case. Generally speaking, they are, balance of convenience or inconvenience to the plaintiff or defendant or witnesses; convenience or inconvenience arising out of a particular place of trial, having regard to the nature of evidence or the points involved in the case; issues raised by the parties; and, reasonable apprehension in the mind of a litigant that he might not get justice in the court, where the proceedings are pending, or reasonable apprehension of failure of justice on the basis of a proven bias. These few factors are some of the aspects, germane in considering the question of transfer of a suit, appeal or other proceedings.

It may be true that distance alone may not be decisive factor but it has its own role while considering the convenience of the parties, particularly, a wife. Court should focus on the convenience rather than redressal or mitigating against inconvenience. Convenience itself is a vital factor, to be reckoned while deciding a Transfer Petition. Suffice it to say, that in the present case, it is not the distance alone for which this Court finds that it would be convenient for the petitioner-wife to defend the case in question at Bhilwara instead of Chittorgarh. There are other surrounding circumstances stated above, for which this Court feels it appropriate to transfer the case to the court at Bhilwara."

In view of the discussions aforesaid, the Case No. 160/2018 titled as "Mohit Binwara Vs. Sheela Payak" is withdrawn from the Family Court , Bikaner to be transferred to Family Court, Bhilwara.

A copy of this order be sent to the respondent-husband, and both the Courts concerned for information and facilitating transmission of the record. Both the parties are directed to remain present before the Family Court, Bhilwara on 15.7.2019.

The Transfer Application is allowed, as indicated above.

**(DINESH MEHTA),J**

200-CPGoyal/-