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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 15.05.2024

+ TR.P.(C.) 77/2024 & CM APPL. 27100-27101/2024

RUCHIKA GUPTA ..... Petitioner

versus

PUNEET GUPTA ..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr. Avadh Bihari Kaushik, Ms. Saloni Mahajan and Mr. Rishabh Kumar, Advocates

For the Respondent : Mr. S.C. Singhal, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**TUSHAR RAO GEDELA, J. (ORAL)**

**[ The proceeding has been conducted through Hybrid mode ]**

1. This is a writ petition under Section 24 of CPC, 1908 filed on behalf of the petitioner/wife seeking transfer of divorce petition filed by the respondent/husband bearing HMA No. 583/2014 titled *Puneet Gupta vs. Ruchika Gupta* presently pending in the Family Court, District West, Tiz Hazari to the Court to Principal Judge, Family Court, North West District at Rohini Court, Delhi.

2. At the outset, it would be relevant to note the provisions of Section 24 of CPC, 1908, which are as under:-

***“24. General power of transfer and withdrawal.***



*(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage -*

*(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or*

*(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and*

*(i) try or dispose of the same; or*

*(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or*

*(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.*

*(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.*

*[(3) For the purposes of this section,*

*(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;*

*(b) proceeding includes a proceeding for the execution of a decree or order].*

*(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small*



*Causes.*

*[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]”*

3. From the aforesaid provisions, it is apparent that the powers can be exercised both by High Courts and the District Courts.
4. The petitioner is seeking transfer of the aforesaid divorce petition from the Family Court at Tis Hazari to the Family Court at Rohini on the following grounds:
  - a. It would be difficult for her to travel from her residence at Pitampura to the District Court at Tiz Hazari, which is more than 10 KM.
  - b. She submits that she has filed a maintenance case in the Family Courts in the North West District at Rohini Courts under the provisions of Section 125 Cr.P.C, 1973 and as such, the transfer of divorce petition to Rohini Court would not prejudice the respondent.
  - c. She submits that she has a school going minor daughter whom she has to take care of and cannot leave her daughter alone.
  - d. She also submits that she has nobody to accompany her while travelling to the Court at Tis Hazari since her father had expired and her mother is also aided.
  - e. She claims that she has no independent income.
  - f. Another ground which has been raised by the petitioner is that she is under threat of the respondent, which may also be considered as a reason for transfer.
5. The arguments of learned counsel on the aforesaid grounds do not



appeal to this Court for the reason that so far as the maintenance petition is concerned, the same was filed on 03.05.2024, just before filing the present petition and as such it cannot be stated that the said maintenance petition was pending prior in time to the divorce petition, which was filed originally in the year 2014.

6. So far as the issue of the minor daughter is concerned, it is admitted by learned counsel for the petitioner that she is around 16 years of age and has completed her 10<sup>th</sup> standard just now. The minor daughter is not an infant who is not able to take care of herself, that too only for some part of the day where the petitioner has to appear for cross-examination in the Family Court at Tis Hazari. Moreover, it is admitted that the mother of the petitioner also resides with her.

7. So far as the petitioner facing threat from the respondent is concerned, nothing has been placed on record to show as to what action has been taken by the petitioner which demonstrates that the apprehension is real and present. In that view of the matter, the said ground is also frivolous and rejected.

8. So far as the issue of income is concerned, appropriate orders for maintenance and travel allowance can be directed by the Courts below. As such, transfer on that account too is untenable.

9. Even the argument of not being able to travel a distance of 10 kms in a place like Delhi is not believable. It is not the case of the petitioner that she is suffering from some medical incapacity. As such, this argument too is negated.

10. It has been informed by Mr. S.C. Singhal, learned counsel for the respondent that the petitioner has not been appearing before the Family



Courts at Tis Hazari for the last two years and the evidence is pending since that time.

11. The present petition appears to be a diversionary tactic only to delay the proceedings and the aforesaid grounds raised by the petitioner do not appeal to this Court.

12. This Court had tried to settle the matter by exercising plenary powers conferred under the Constitution of India, 1950, however the same has not fructified since there is a huge variation between the demand of the petitioner and what the respondent is ready to settle for.

13. The transfer of a petition from one Court to another cannot be done at whims and fancies of a party, unless there are sufficient grounds for doing so. The principle governing the general power of transfer and withdrawal under Section 24 of the CPC, 1908 as held by the Supreme Court in *Indian Overseas Bank, Madras vs. Chemical Constructions Company & Ors.* reported in (1979) 4 SCC 358, is that the plaintiff is the *domnus litis* and as such, entitled to institute his suit in any forum which the law allows him. The Court should not lightly change that forum and compel him to go to another Court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another Court, albeit a material consideration, may not always be a sure criterion justifying the transfer.

14. No cogent or viable grounds for such transfer have been made out in the present petition and as such, the petition is dismissed with no order as to costs.

**TUSHAR RAO GEDELA, J**

**MAY 15, 2024**

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