

AFR

Court No. - 36

Case :- TRANSFER APPLICATION (CIVIL) No. - 674 of 2024

Applicant :- Smt. Shivika Upadhyay

Opposite Party :- Pushendra Trivedi

Counsel for Applicant :- Sandeep Kumar

Hon'ble Kshitij Shailendra,J.

**ON THE ISSUE OF TERRITORIAL JURISDICTION OF
PRINCIPAL SEAT OF ALLAHABAD HIGH COURT AND ITS
LUCKNOW BENCH IN MATTERS OF TRANSFER OF
MATRIMONIAL CASES**

1. Heard Shri Sandeep Kumar, learned counsel for the applicant.
2. Prayer to transfer Case No. 303 of 2024 (Pushendra Trivedi vs. Smt. Shivika Upadhyay) under Section 13(1)(a) of Hindu Marriage Act, 1955 from Principal Judge, Family Court, Lucknow to District Bareilly has been made in this application.
3. The Stamp Reporting Section has submitted a report regarding non-maintainability of the transfer application on the ground that the case is pending under the territorial jurisdiction of the Lucknow Bench.
4. Learned counsel for the applicant submits that since part of cause of action has arisen within the territorial limits of jurisdiction of this Court, i.e. the Principal seat, the transfer application is maintainable as it is the choice of the applicant to choose forum.

5. Many applications seeking transfer of proceedings pending in family courts functioning in territorial limits of jurisdiction of Lucknow Bench are coming up for consideration at the Principal seat and in almost all cases, plea of "arising of part of cause of action" within territorial limits of Principal seat at Allahabad is taken. In this view of the matter, this Court deems it appropriate to deal with this issue in some details.

6. This Court may observe that whatever arguments are advanced either taking a plea of "part of cause of action" or "forum convenience", the same are based upon certain authorities which have dealt with the issue of territorial jurisdiction in relation to writ petitions filed under Article 226 of the Constitution of India. This is so because sub-clause (2) of Article 226 of the Constitution provides that power conferred by clause (1) of the said article to issue directions, orders or writs may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power. The Court may refer to certain authorities discussed and referred time and again by this Court in various judgments. Some of these authorities are as under:

"i. Nasiruddin vs. State Transport Appellate Tribunal reported in (1975) 2 SCC 671

ii. Rajendra Kumar Mishra vs. Union of India & others reported in [(2005) 1 UPLBEC 108

iii. State of Rajasthan vs. M/s. Swaika Properties reported in (1985) 3 SCC 217

iv. U.P. Rashtriya Chini Mill Adhikari Parishad vs. State of U.P. reported in (1995) 4 SCC 738

v. Navinchandra N. Majithia vs. State of Maharashtra

reported in (2000) 7 SCC 640

vi. Ambica Industries vs. Commissioner of Central Excise reported in (2007) 6 SCC 769

vii. Alchemist Ltd. vs. State Bank of Sikkim reported (2007) 11 SCC 335

viii. Rajendra Chingravelu vs. R.K. Mishra reported in (2010) 1 SCC 457

ix. Nawal Kishore Sharma vs. Union of India reported in (2014) 9 SCC 329

x. Kusum Ingots & Alloys Ltd. vs. Union of India reported in (2004) 6 SCC 254

xi. Judgment dated 17.11.2004 passed by Supreme Court in Civil Appeal No.8290 of 2002 (Dr. Manju Varma Vs. State of U.P. and others)"

7. The aforesaid authorities deal with territorial limits of jurisdiction of a writ court under Article 226 of the Constitution of India and as regards Allahabad High Court, provisions of U.P. High Courts (Amalgamation) Order 1948 have been dealt with along with concept of Forum Convenience and arising of cause of action, wholly or in part. However, in order to examine as to whether in matrimonial matters, when transfer is sought on the basis of convenience of the parties or other like grounds such as place of temporary or permanent residence of one of the parties or pendency of certain cases in one or the other districts, provisions of Code of Civil Procedure, 1908 read with Family Courts Act, 1984 must be dealt with, otherwise the confusion regarding territorial jurisdiction in such matters would continue to prevail.

8. Power to transfer suit or proceedings of civil cases is contained under Section 24 of C.P.C., which reads as under:-

Section 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 it 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.]

9. The Court must, simultaneously, refer to Sections 22 and 23 of the Code which read as under:-

“Civil Procedure Code, 1908

Section 22. Power to transfer suits which may be

instituted in more than one Court.

Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Section 23. To what Court application lies.

(1) **Where the several Courts having jurisdiction are subordinate to the same Appellate Court,** an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate."

10. Words "Appellate Court" used in Section 23(1) of CPC are of much significance. While advancing arguments based upon Forum Convenience or arising of cause of action in transfer matters, it is always urged that since there is a single High Court in the State of U.P., all the Family Courts are subordinate to the High Court and, hence, transfer application can be filed either before the Principal Seat of this Court or its Lucknow Bench. However, sub-section (1) of Section 23 makes it clear that subordination of courts in the matters of transfer has to be understood in the light of "**Appellate Court**". For example, if an order is passed by a Family Court situated in Gonda or Basti or Sitapur or any other district falling under territorial limits of jurisdiction of Lucknow Bench, appeal under Section 19 of the Family Courts Act, 1984 would lie before the Lucknow Bench and not before the Principal Seat at Allahabad. In such matters, Lucknow Bench

being the Appellate Court, transfer application would lie before it and not before the Principal Seat.

“Civil Procedure Code, 1908

Section 2(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court;

Section 3 – Subordination of Courts- For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.”

11. Now, in order to further clarify the power to transfer matrimonial cases, certain provisions of Family Courts Act, 1984 need reference. The same are reproduced as under:-

Family Courts Act, 1984

Section 2(d)- "Family Court" means a Family Court established under section 3;

2(e) all other words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908 (5 of 1908) shall have the meanings respectively assigned to them in that Code.

Section 3

.....

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits.

Section 7. Jurisdiction.-(1) Subject to the other provisions of this Act, a Family Court shall-

(a). have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

12. On perusal of aforesaid provisions of the Act of 1984, it is clear that establishment of a Family Court is as per notification issued by the State Government defining the local limits of the area to which the jurisdiction of a Family Court shall extend. Further, Family Court shall be deemed to a District Court and in view of Section 2(4) of the Code of Civil Procedure, a District Court would confine its jurisdiction as per its local limits and not beyond that. Hence, territories to which any Family Court exercises its jurisdiction would determine the Forum where application seeking transfer of proceedings pending in such areas would lie.

13. The Supreme Court, in **Shah Newaz Khan and others vs. State of Nagaland and others, (2023) 11 SCC 376**, by making reference of its earlier decision in **Durgesh Sharma vs. Jayshree, (2008) 9 SCC 648**, observed that the law relating to transfer of cases (suits, appeals and other proceedings) is well settled. It is found in Sections 22 to 25 of the Code and those provisions are exhaustive in nature. Whereas Sections 22, 24 and 25 deal with power of transfer, Section 23 merely provides forum and specifies the court in which an application for transfer may be made. Section 23 is not a substantive provision vesting power in a particular court to order transfer. It has further been held that where several courts having jurisdiction are subordinate to one appellate court, an application for transfer may be made to such appellate court and the court may transfer a case from one court subordinate to it to another court subordinate to it.

14. In **Durgesh Sharma (supra)**, after dealing with the provisions of Sections 22, 23, 24 and 25 CPC, the Supreme Court observed as under:

.... “Every court has its own local or territorial limits beyond which it cannot exercise the jurisdiction. So far as this Court is concerned, its jurisdiction is not circumscribed by any territorial limitation and it extends over any person or authority within the territory of India. But, it has no jurisdiction outside the country. So far as a High Court is concerned, its jurisdiction is limited to territory within which it exercises jurisdiction and not beyond it. On that analogy also, a High Court cannot pass an order transferring a case pending in a court subordinate to it to a court subordinate to another High Court. It would be inconsistent with the limitation as to territorial jurisdiction of the Court”.

15. In view of the above discussion of sections 2(4), 3, 22, 23, 24 CPC read with Section 2(d), 2(e) and 7 of the Family Courts Act, this Court is of the considered view that since Lucknow Bench would be the appellate court competent to hear the appeals against an order passed by Family Court situated in any of the courts subordinate to it and functional within its/their territorial limits of jurisdiction, the transfer application in relation to a case pending within those territories shall lie before the Lucknow Bench being the appellate court and not before the principal seat at Allahabad where such an appeal would be incompetent.

16. In view of the above, the instant transfer application before this Bench is not maintainable and it is, accordingly, **rejected**. However, this order will not preclude the applicant to file transfer application before Lucknow Bench.

Order Date :- 8.11.2024

K.K.Tiwari/AKShukla/-

(Kshitij Shailendra, J.)