



2026:AHC:159095

HIGH COURT OF JUDICATURE AT ALLAHABAD

TRANSFER APPLICATION (CIVIL) No. - 376 of 2025

.....Applicant(s)
Versus

.....Opposite Party(s)

Counsel for Applicant(s)	: Abhishek Gupta
Counsel for Opposite Party(s)	: Ajay Sengar, Gunjan Yadav

AFR
Court No. - 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

1. Heard Sri Abhishek Gupta, learned counsel for applicant and Ms. Gunjan Yadav, learned counsel for opposite party.
2. The present transfer application has been filed under Section 24 of the Code of Civil Procedure, 1908 seeking transfer of Case No. 595 of 2025 (*Vaibhav Maheshwari v. Priyanka Maheshwari*), instituted under Section 9 of the Hindu Marriage Act, 1955, from the Court of the Principal Judge, Family Court, Aligarh to the Court of the Principal Judge, Family Court, Gautam Budh Nagar.
3. The principal ground urged in support of the transfer application is that the applicant is presently residing in District Gautam Budh Nagar, where her minor daughter is pursuing her education. It is submitted that the applicant is the primary caregiver of the minor child and is, therefore, required to remain at Gautam Budh Nagar to attend to her educational and day-to-day needs. According to the applicant, compelling her to undertake repeated travel to Aligarh for attending the proceedings would not only cause her considerable inconvenience and financial burden but would also adversely affect the education and

welfare of the minor child. It is thus contended that the balance of convenience lies in favour of transferring the proceedings to Gautam Budh Nagar, where the applicant is presently residing with the child.

4. It is further submitted that Maintenance Petition No. 98 of 2025 under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is already pending before the Court of the Principal Judge, Family Court, Gautam Budh Nagar. In such circumstances, it is urged that transfer of the proceedings under Section 9 of the Hindu Marriage Act, 1955 to the same Court would facilitate a more convenient and effective adjudication of the disputes between the parties, obviate the necessity of contesting parallel proceedings before different courts, avoid multiplicity of litigation, reduce unnecessary expenditure and hardship, and subserve the ends of justice.

5. *Per contra*, learned counsel appearing for the opposite party, placing reliance upon the averments contained in the counter affidavit, submits that both the applicant's parental home and her maternal home are situated in District Aligarh. It is contended that the prayer for transfer of the proceedings to District Gautam Budh Nagar has been advanced solely with a view to protract and delay the adjudication of the petition instituted under Section 9 of the Hindu Marriage Act, 1955.

6. It is further submitted that District Aligarh is a well-established educational centre and that the mere fact that the applicant has chosen to have her daughter educated in Gautam Budh Nagar cannot, by itself, constitute a sufficient or compelling ground for transfer. According to the opposite party, the applicant's decision to reside at Gautam Budh Nagar for the purpose of her daughter's education is a matter of personal choice and cannot be permitted to dictate the forum of adjudication of the matrimonial proceedings.

7. Proceeding further, learned counsel submits that the petition under Section 9 of the Hindu Marriage Act, 1955 has been instituted with the *bona fide* object of seeking restitution of conjugal rights and restoration of the matrimonial relationship by bringing the applicant and the minor daughter back to the matrimonial home. It is urged that, on account of

the pendency of the present transfer application and the interim protection granted by this Court, the proceedings before the Family Court have remained stalled, thereby frustrating the very object of the petition.

8. Reliance has also been placed upon the decision of this Court in **Anjana Rana v. Navin Singh**¹, to contend that the jurisdiction under Section 24 of the Code of Civil Procedure is discretionary in nature and is required to be exercised sparingly, with great care, caution and circumspection. It is submitted that transfer of matrimonial proceedings cannot be ordered merely on the basis of the convenience or preference of one of the parties. Before directing transfer, the Court must be satisfied that the applicant has established genuine hardship, grave inconvenience or other exceptional circumstances warranting such transfer in the interest of justice. Mere inconvenience, unsupported by cogent material demonstrating that refusal of transfer would result in failure of justice, cannot by itself justify exercise of the power under Section 24 CPC. It is further submitted that while the doctrine of balance of convenience is undoubtedly a relevant consideration, the Court is required to balance the convenience of both parties, the convenience of witnesses, the availability of evidence and the suitability of the forum, while also bearing in mind that the plaintiff, being *dominus litis*, is ordinarily entitled to choose the forum for institution of the proceedings. It is, therefore, contended that, in the absence of any compelling circumstance warranting interference, the forum lawfully chosen by the opposite party deserves due deference and the transfer application is liable to be dismissed.

9. In the backdrop of the rival submissions, the question which falls for consideration is whether the applicant has established the existence of such genuine hardship, compelling inconvenience or other exceptional circumstances as would warrant exercise of the discretionary jurisdiction of this Court under Section 24 of the Code of Civil Procedure for transfer of the proceedings from the Court of the Principal Judge, Family

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Court, Aligarh to the Court of the Principal Judge, Family Court, Gautam Budh Nagar.

10. Having bestowed anxious consideration to the rival submissions and upon an overall appraisal of the facts and circumstances of the case, this Court proceeds to examine whether the applicant has been able to establish the existence of such genuine hardship, compelling inconvenience or other exceptional circumstances as would warrant exercise of the discretionary jurisdiction under Section 24 of the Code of Civil Procedure.

11. The power of transfer under Section 24 of the Code of Civil Procedure is intended to advance the ends of justice and not to enable a litigant to secure a forum of personal convenience. Consequently, the burden lies upon the applicant to establish, by cogent and convincing material, that continuance of the proceedings before the Court in which they have been instituted would occasion genuine hardship or result in failure of justice.

12. In the present case, the principal ground urged by the applicant is that she is presently residing at Gautam Budh Nagar on account of the schooling of her minor daughter. While this Court is not unmindful of the paramount importance of a child's welfare and the responsibilities cast upon a parent in ensuring her education and upbringing, such a circumstance, by itself, cannot be elevated into a rule of universal application so as to justify transfer of matrimonial proceedings in every case where a party chooses to reside at a place different from the forum of institution. Though the convenience of the wife and the welfare of a minor child are undoubtedly relevant considerations in matrimonial disputes, they cannot be treated as inflexible or overriding considerations divorced from the facts of the individual case. The decisive test is whether refusal of transfer is likely to occasion a failure of justice.

13. The applicant has not placed any material on record to demonstrate that attending the proceedings before the Family Court at Aligarh is rendered impracticable or that such attendance would impose a hardship of such magnitude as would effectively deprive her of an

opportunity to contest the proceedings. Mere inconvenience or additional travel, howsoever relevant, cannot, in the absence of compelling circumstances, furnish a sufficient foundation for exercise of the power under Section 24 CPC.

14. Equally, the mere pendency of Maintenance Petition No. 98 of 2025 under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 before the Family Court at Gautam Budh Nagar does not, by itself, constitute a compelling ground for transfer of the proceedings. Though avoidance of multiplicity of litigation is a relevant consideration while exercising jurisdiction under Section 24 CPC, it is neither conclusive nor determinative. The proceedings under Section 9 of the Hindu Marriage Act, 1955 and those under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are distinct in their nature, scope and object, and the mere pendency of such proceedings before different Courts does not, in the absence of demonstrable prejudice, likelihood of conflicting adjudications or any other compelling circumstance affecting the administration of justice, warrant their consolidation before a common forum. No material has been placed on record to establish that continuation of the proceedings before different Courts would occasion any failure of justice or otherwise justify displacement of the forum lawfully chosen by the opposite party.

15. The legal position governing the exercise of jurisdiction under Section 24 CPC may be succinctly stated thus. The jurisdiction under Section 24 of the Code of Civil Procedure is discretionary in nature and is required to be exercised sparingly, with circumspection and only where the ends of justice demonstrably so require. The provision is not intended to facilitate forum shopping or to permit a litigant to seek transfer merely because another forum may be comparatively more convenient. While the convenience of the wife, the welfare of a minor child and the pendency of connected proceedings are undoubtedly relevant considerations in matrimonial disputes, none of these factors, either individually or collectively, constitutes an inflexible rule mandating transfer. The Court is required to undertake a holistic

assessment of all relevant circumstances, including the convenience of both parties, the nature of the proceedings, the availability of evidence, the stage of the litigation and the likelihood of prejudice being caused by refusal of transfer. Equally, due weight must be accorded to the right of the plaintiff, as *dominus litis*, to prosecute proceedings before a forum otherwise competent in law. Unless the applicant establishes that continuance of the proceedings before the existing forum would occasion genuine hardship or result in denial of a fair and effective opportunity to prosecute or defend the case, the forum lawfully chosen by the plaintiff ought not to be disturbed as a matter of routine.

16. Tested on the touchstone of the aforesaid principles, this Court finds that the grounds urged by the applicant do not satisfy the threshold for invoking the discretionary jurisdiction under Section 24 CPC. The applicant has failed to discharge the burden of establishing that continuance of the proceedings before the Family Court at Aligarh would occasion such genuine hardship or compelling inconvenience as would effectively deprive her of a fair and effective opportunity to contest the proceedings or otherwise result in failure of justice. The circumstances relied upon by the applicant, namely, the schooling of the minor daughter at Gautam Budh Nagar and the pendency of maintenance proceedings before the Family Court at Gautam Budh Nagar, though relevant considerations, do not, in the facts of the present case, outweigh the opposite party's right to prosecute the proceedings before the forum lawfully chosen by him. On the contrary, the proceedings instituted under Section 9 of the Hindu Marriage Act, 1955 have remained stalled on account of the pendency of the present transfer application and the interim protection operating therein. The balance of convenience, viewed holistically, does not tilt so decisively in favour of the applicant as to justify transfer of the proceedings.

17. For all the aforesaid reasons, this Court finds that the grounds urged by the applicant fall short of the threshold required for invoking the discretionary jurisdiction under Section 24 of the Code of Civil Procedure. The applicant has failed to demonstrate that continuance of

the proceedings before the Court at Aligarh would occasion any failure of justice or cause such genuine hardship as would justify transfer. Consequently, no case for transfer is made out.

18. The transfer application is, accordingly, **dismissed**. The interim order, if any, stands vacated. The Principal Judge, Family Court, Aligarh shall proceed with the proceedings expeditiously and endeavour to conclude the same in accordance with law, without being influenced by any observation contained in this order, which is confined exclusively to the adjudication of the present transfer application.

(Dr. Yogendra Kumar Srivastava,J.)

July 30, 2026

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