

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 21ST DAY OF JUNE 2023 / 31ST JYAISHTA, 1945

TR.APPEAL (C) NO. 3 OF 2023

AGAINST THE JUDGMENT DATED 25.05.2023 IN TR.P. (C) NO.76

OF 2023 OF THE HIGH COURT OF KERALA

APPELLANT/PETITIONER:

RAJAM BABU,
AGED 69 YEARS, W/O K.K.BABU, KAITHAVALAPPIL
HOUSE, INDEEVARAM, 16TH STREET, HARINAGAR,
POONKUNNAM P.O., THRISSUR, PIN - 680002.

BY ADVS.

C.Y.VINOD KUMAR

C.ANILKUMAR (KALLESSERIL)

P.M.MANASH

RESPONDENT/RESPONDENT:

BABU K.K
AGED 72 YEARS
S/O KUMARAN, KAITHAVALAPPIL HOUSE, KALLEPARAMB
DESOM, PUTHENVELIKKARA P.O., NORTH PARAVUR,
ERNAKULAM, PIN - 683594.

BY ADV B RAMACHANDRAN B

THIS TRANSFER APPEAL (CIVIL) HAVING COME UP FOR
ADMISSION ON 21.06.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

“C.R.”**JUDGMENT**P.G. Ajithkumar, J.

The petitioner in Transfer Petition (C) No.76 of 2023 is the appellant in this appeal filed under Section 5(i) of the Kerala High Court Act, 1958. The Transfer Petition was filed by the appellant seeking to transfer O.P.No.2752 of 2019 pending on the files of the Family Court, Ernakulam to the Family Court, Thrissur. That petition was dismissed as per the order dated 25.05.2023.

2. The respondent entered appearance through his learned counsel on 16.06.2023.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

4. The order dated 25.05.2023 in Transfer Petition (C) No.76 of 2023 reads as follows:-

“Annexure I is the petition for divorce instituted by the husband pending before the Family Court, Ernakulam, and Annexure II is the petition for restitution of

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conjugal rights instituted by the wife pending before the Family Court, Thrissur. The wife is aged 69 years and the husband is aged 72 years. Both are age old persons standing on the same pedestal regarding old-age. No other special reason was brought to the notice of this court.

Tr.P.(C) will stand dismissed.”

5. The appellant is the wife of the respondent. They are Hindus and governed by the provisions of the Hindu Marriage Act, 1955. Annexure-I is a copy of the petition in O.P.No.2752 of 2019. It was filed on 20.11.2019 by the respondent seeking a decree of divorce before the Family Court, Ernakulam. Annexure-II is a copy of the petition in O.P.No.1119 of 2019. It was filed before the Family Court, Thrissur on 18.06.2019 by the appellant seeking a decree of restitution of conjugal rights. The appellant wants to transfer O.P.No.2752 of 2019 from the Family Court, Ernakulam to the Family Court, Thrissur. Two grounds urged are her convenience and requirement of a joint trial of two cases. The learned Single Judge did not accept the contentions of the appellant by holding that the reasons stated were insufficient for a transfer.

6. The Apex Court in **Guda Vijayalakshmi v. Guda Ramchandra Sekhara Sastry [(1981) 2 SCC 646]** held that ordinarily a petition for divorce and a petition for restitution of conjugal rights between the same parties shall be heard and decided together in order to avoid conflicting decisions. A joint trial of two cases is possible only if both cases are in one court. In that view of the matter, a transfer of one of the cases is unavoidable.

7. Both Annexure I and II petitions were filed under the provisions of the Hindu Marriage Act, 1955. Section 21A of the said Act contains the provisions for transfer of petitions in certain situations. Section 21A reads,-

“21A. Power to transfer petitions in certain cases.— (1)

Where—

(a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground,

whether in the same district court or in a different district court, in the same State or in a different State, the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,—

(a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;

(b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.”

8. In the light of sub-section (2)(b) of Section 21A of the Act, a request of the appellant for transfer of O.P.No.2752 of 2019 pending before the Family Court, Ernakulam which

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was filed on a later point of time, cannot be declined. In that view of the matter also, the order in Transfer Petition (C) No.76 of 2023 requires interference.

9. The Apex Court in **Mona Aresh Goel v. Aresh Satya Goel [(2000) 9 SCC 255]**, **Sumita Singh v. Kumar Sanjay and another [(2001) 10 SCC 41]** and **Vaishali Shridhar Jagtap v. Shridhar Vishwanath Jagtap [(2016) 14 SCC 356]** considered the request of the respective petitioner-wife for transfer of the petition from one court to another court. In all those cases decisions were rendered on the particular facts of each case. However, the Apex Court took a common view that the convenience of the wife has to be looked into and given priority while deciding a petition for transfer of a matrimonial dispute.

10. In **Santhini v. Vijaya Venketesh [(2018) 1 SCC 1]**, the Apex Court laid down the principles that would apply while a wife seeks transfer of a matrimonial case to a court of her convenience. The Apex Court took the view that the husband ordinarily shall take proceedings in court in whose

jurisdiction the wife resides and that will lesser inconvenience to the parties and avoid delay. The Apex Court further observed that a statutory right of a woman cannot be nullified by taking technical advancement and destroying her right under a law, more so, when it relates to family matters. The further observation is that the dignity of a woman is sustained and put on a higher pedestal if her choice is respected.

11. Thus, vivid is the law on the point. When a transfer is sought by the wife in consideration of her convenience, that request shall ordinarily be allowed by the court. The appellant wife is residing in Thrissur. She is aged 69 years. The respondent also is aged, and he is aged 72 years. But considering the comparative hardship and in the light of the law laid down in the aforesaid decisions, the inevitable conclusion is that O.P.No.2752 of 2019 is liable to be transferred from the Family Court, Ernakulam to the Family Court, Thrissur.

12. Accordingly, this appeal is allowed. O.P.No.2752 of 2019 pending before the Family Court, Ernakulam is transferred to the Family Court, Thrissur.

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Registry shall forward a copy of this judgment to both the Family Courts, and on receipt of a copy, the Family Court, Ernakulam shall transmit the records in O.P.No.2752 of 2019 to the Family Court, Thrissur.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr