

Before : J. V. Gupta, J.

VED PARKASH GARG,—Petitioner.

versus

SEEMA,—Respondent.

Civil Revision No. 1315 of 1986

December 12, 1986

*Hindu Marriage Act (XXV of 1955)—Sections 9, 13, 21-A(3)—Code of Civil Procedure (V of 1908)—Section 23(3)—Wife's petition for restitution of conjugal rights pending in a Matrimonial Court in one State—Husband filing divorce petition subsequently in a Court in another State—Wife obtaining stay of divorce proceedings initiated by husband—Wife's prayer for transfer of divorce proceedings to the Court where her petition was pending sought at revisional stage before the High Court on the ground that both petitions be tried together—Jurisdiction of High Court to transfer proceedings—Divorce petition—Whether can be transferred under Section 23(3) of the Code—Section 21-A of the Act—Whether exhaustive—High Court—Whether competent to transfer proceedings under the Act from a Court under its jurisdiction to a Court outside its territorial jurisdiction.*

*Held, that sub-section (3) of Section 23 of the Code of Civil Procedure, 1908, provides for the situation where two Courts have the jurisdiction to try the petitions and are subordinate to different High Courts. In such a situation, the application for transfer shall be made to the High Court within the local limits of whose jurisdiction the Court in which the petition was brought is situate. If once it is held that Section 21-A of the Hindu Marriage Act, 1955, is not exhaustive and the code is made applicable to the proceedings under sub-section (3) of Section 21-A of the Act. Then, it has to be held that the High Court has the power to transfer the proceedings under Section 13 of the Act pending in the Court under its territorial jurisdiction to a Court outside its territorial jurisdiction.*

(Para 6).

*Petition under Section 115 C.P.C. for revision of the order of the Court of Shri M. S. Nagra, Additional District Judge (II) Jind, dated 3rd February, 1986, staying till the decision of the petition filed before the Additional District Judge, Delhi and it will be restored on the request of either of the parties after the decision of petition under section 9 of the Hindu Marriage Act.*

**Rajesh Chaudhry, Advocate, for the Petitioner.**

**P. S. Saini, Advocate, for the Respondent.**

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**JUDGMENT**

**J. V. Gupta, J.:**

(1) This revision petition is directed against the order of the Additional District Judge (II), Jind, dated February 3, 1986, whereby the petition under section 13 of the Hindu Marriage Act, 1955, (hereinafter called the Act), filed by the husband-petitioner Ved Parkash Garg against his wife—respondent Smt. Seema, seeking divorce on the ground of cruelty and desertion, has been stayed under section 10, Code of Civil Procedure, (hereinafter called the Code).

2. Admittedly, prior to the filing of the said petition, the respondent wife had already filed petition under section 9 of the Act for restitution of conjugal rights against the petitioner which is pending in the Court of the Additional District Judge, Delhi, since December, 1984. The petitioner husband filed the petition under section 13 of the Act on August 5, 1985, and it is pending in the Court of the Additional District Judge (II), Jind, in Haryana, when the notice of the said application was given to her, she moved an application under section 10 of the Code for staying the proceedings there in view of the petition filed by her in the Court at Delhi. The said application was opposed by the husband primarily on the ground that the relief being sought in the two petitions was different and as such the pendency of the previously instituted petition under section 9 of the Act shall not stand in the way of the petition under section 13 of the Act. However, the learned Additional District Judge,—*vide* impugned order came to the conclusion that in case the petition under section 13 is allowed to proceed and if ultimately allowed, the petition earlier filed under section 9 of the Act by the wife in the Court at Delhi would be rendered infructuous as after the grant of the decree for divorce there would be no occasion for passing the order for restitution of conjugal rights. Consequently, the application under section 10 of the Code was allowed and the petition under section 13 of the Act was stayed till the decision of the petition filed by the wife under section 5 of the Act, pending in the Court at Delhi.

3. According to the petitioner, the proceedings under section 13 could not be stayed in view of the provisions of section 21-A of the Act, which provides for the transfer of petitions in certain cases.

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According to the learned counsel for the petitioner, even the petition under section 13 could not be transferred under the said provisions of the Act to the Court at Delhi and, therefore, the question of staying the proceedings therein under section 10 of the Code did not arise. In support of the contention, the learned counsel relied upon *Gurmail Kaur v. Pritam Singh*, (1). On the other hand, the learned counsel for the respondent wife submitted that the impugned order was just and proper and, therefore, there was no justification for interfering with the same in revisional jurisdiction. In any case, argued the learned counsel, it was a fit case which should be transferred to the Court at Delhi where the petition under section 9 filed earlier by the wife was pending so that both the petitions could be decided simultaneously by one Court. According to the learned counsel, this Court has ample powers to transfer the proceedings pending in the Court at Jind, in Haryana, to the Court at Delhi, under section 23 of the Code. The learned counsel also submitted that section 21-A of the Act was not exhaustive and, therefore, it did not debar the staying of the proceedings in the subsequent petition or the transfer of the same to the court where the earlier petition was filed in support of the contention, the learned counsel relied upon *G. Vijayalakshmi v. G. Ramachandra Sekhara Sastry* (2) ; *State Bank of India v. M/s. Sakow Industries, Faridabad (Pvt.) Ltd., New Delhi*, (3) and a judgment of the Karnataka High Court in *Manjulatha v. Dr. M. L. Narasimhan*, (4).

4. After hearing the learned counsel for the parties and going through the case law cited at the bar, I am of the considered opinion that it is a fit case where the petition filed by the husband under section 13 of the Act, be transferred to the Court at Delhi where the petition filed under section 9 of the Act by the wife is already pending. It has been held by the Supreme Court in *G. Vijayalakshmi's case* (supra), that so far as section 21-A of the Act is concerned, its marginal note makes it clear that it deals with power to transfer petitions and direct their joint or consolidated trial 'in certain cases' and is not exhaustive. In the said case the Supreme Court by exercising powers under section 25 of the Code transferred the

(1) 1979 H.L.R. 86.

(2) A.I.R. 1981 S.C. 1143.

(3) A.L.R. 1976 Pb. & Hry. 321.

(4) 1985(2) H.L.R. 10.

divorce proceedings initiated by the husband from one State to another.

5. The short question in this petition is; whether this Court is competent to transfer the proceedings from the Court at Jind to the Court at Delhi which is not under the jurisdiction of this Court?

6. This matter is not *res integra*. In *Sakow Industries case* (supra), this Court in exercise of its powers under section 23(3) read with section 151 of the Code, transferred the case pending in the Ballabgarh Court, in the Haryana State, to the Court at Alipore District 24 Parganas, West Bengal, wherein the suit filed by the petitioner therein was already pending. Similarly, the Karnataka High Court in *Manjulatha's case* (supra), relying upon the Supreme Court decision in *G. Vijayalakshmi's case* (supra) and the decision of this Court in *Sakow Industries case* (supra), transferred the proceedings initiated by the husband from the Court of the City Civil Judge, Bangalore, to the Court of the Chief Judge, City Civil Court, Hyderabad, under section 23(3) of the Code. Section 23 of the Code reads as under :

“To what Court applications lie.—(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.”

Thus, sub-section (3) provides for the situations where two Courts have the jurisdiction to try the petitions and are subordinate to different High Courts. In such a situation, the application for transfer shall be made to the High Court within the local limits of whose jurisdiction the Court in which the petition was brought is situate. If once it is held that section 21-A of the Act is not exhaustive and the Code is made applicable to the proceedings under the Act under sub-section (3) of section 21-A, then this Court has the power to

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transfer the proceedings pending in the Court at Jind to the Court at Delhi. It could not be disputed that both the petitions, i.e., the one filed by the wife earlier and pending in the Court at Delhi and the one filed by the husband and pending in the Court at Jind, should be tried simultaneously in the interest of justice in the Court at Delhi.

7. In view of the above discussion, this revision petition against the impugned order is disposed of inasmuch as order staying the proceedings is vacated with the direction that the petition under section 13 of the Act, brought by the petitioner and pending in the Court at Jind, is transferred to the Court at Delhi where the proceedings under section 9 initiated by the respondent are pending. The Court at Delhi may simultaneously proceed with the trial of both the petitions. No order as to costs.

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R.N.R.