

TRANSFER PETITIONS MUST FACTOR IN CASE MERIT AND MUST NOT BE GENDER INCLINED

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Woman empowerment brought in special provisions ensuring protection to women but it is being misused. There's a new trend where girls befriend guys to marry after assessing his social & financial status and if he isn't catering to her greed, she simply walks out by putting false accusations on him and his family, causing them to get summoned to police stations and courts. The rise of such false allegations and harassment on men even leading to suicide is alarming.

When a man trapped in such marriage seeks divorce, the wife may apply delaying tactics to coerce him to shell out huge sums. Law is now used as playground for extortion and many cases are following the same pattern. Tactics like taking advantage of the pandemic, applying for transfer petition etc to harass the husband and delay divorce proceedings is on the rise. As per procedures of the Supreme Court Rules 2013, the transfer petition on first hearing date is posted before Court for preliminary hearing and orders as to issue of Notice. If court is not convinced that prima facie a case of transfer is made out then it can dismiss it, otherwise, Notice is issued to Respondent to show cause why the petition should not be transferred. In the entire process, in best scenario, it normally takes upto three months in adjudication of transfer petitions.

Transfer Petition is filed by the party who intends to get the case transferred from one court to

another court as specified. Then court decides whether or not the case is transferable based on relevant grounds. Divorce transfer petition are filed in Supreme Court and its civil transfer jurisdiction is invoked usually at the instance of the wife because the husband filed the petition in place of matrimonial residence but wife is residing in some other State.

Under Section 25 of the Code of Civil Procedure, the Supreme Court has power to transfer any Case, appeal or other proceedings. This power may be exercised by Supreme Court if it is satisfied that an order under this Section is expedient for the ends of justice. As a rule, the Supreme Court does not allow Transfer Petition without issuing Notice to the Respondent/ the person who instituted the case at original local level. However, post Notice if Respondent does not appear then an Ex-parte order of transferring the case may be passed (*Gyanmati Yadav v. Ram Sagar Yadav*, (2013) 14 SCC 621).

The court invariably takes a sympathetic view towards the wife's plea for transfer, but this is not always the case and the trend is increasingly changing as educated women have misused laws to suit them and harass men. These days Supreme Court is not lenient in allowing transfer petition in favor of wife and is mostly dismissing them which is very encouraging and there are judgments passed by Supreme Court in this regard.

In *Kalpana Devi Prakash Thakur v. Dr. Devi Prakash Thakur* (1996) 11 SCC 96, court dismissed the wife's plea for transfer taking into account that: (1) the husband was medical practitioner and his absence from Mumbai would cause inconvenience to his patients; (2) his old and ailing mother living with him needed regular medical check-ups and constant care; (3) the witnesses were principally from Mumbai; (4) the wife had relatives in Mumbai with whom she could stay whenever she went there for the case; (5) the husband was ready to bear the expenses of travel and also travelling expenses of the escort (6) Palanpur was well connected to Mumbai by train.

In *Krishna Veni Nagam vs Harish Nigam* (2017) 4 SCC 150, the Supreme court stated that it is necessary to issue certain directions which may provide alternative to seeking transfer of proceedings on account of inability of a party to contest proceedings at a place away from their ordinary residence on the ground that if proceedings are not transferred it will result in denial of justice. The Court also stated that it orders incorporating safeguards which may be sent along with the summons. The safeguards can be:- i) Availability of video conferencing facility.ii) Availability of legal aid service.iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.iv) E-mail address/phone number, if any, at which litigant from out station may communicate.The aforementioned guidelines were issued to all High courts to make arrangements for video conferencing instead of transferring petitions, therefore dismissing all the transfer petitions filed in the Honourable Supreme Court.

In certain cases, Courts have chosen a middle path to transfer. Even settlement of cases during pendency of the transfer petition is encouraged and instead of relegating the parties to the trial court when both the parties are willing, the Court may permit to file for divorce petition by mutual consent itself. It is precisely in such situations that the power of the Court under Article 142 of the Constitution can come to the aid of parties, because "complete justice" is then done.

Courts are already sitting on a ticking pendency bomb and citizens are losing sanity and faith in judiciary. Experience has demonstrated that outside of the Supreme Court and certain High Courts, other courts are not capable of hearing large numbers of cases virtually. The spirit behind orders of Supreme Court must be gender neutral while granting justice on basis of genuine facts. If it's found that power of Supreme Court is invoked to harass then it is to be penalised and divorce be granted. In an age where marriage and divorces are happening at the speed of light, it is prudent to dismiss off any impediments that thwart the Courts from rendering justice in a gender neutral way.

About the Author:

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