

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2011
(Arising out of SLP(C) No.25880 of 2009)

Bharti Kumari alias Bharti Kumari Jha ... Appellant

Versus

Arun Choudhary alias Arun Kumar Chaoudhary ... Respondent

ORDER

1. Leave granted.

2. Matrimonial discord between the appellant and the respondent and the appellant's zeal to continue her pursuit for economic independence by joining service as Anganwadi worker has generated fair amount of litigation between them. This appeal filed against order dated 4.5.2009 passed by the learned Single Judge of the Patna High Court declining the appellant's prayer for transfer of the divorce case instituted by the respondent, which is pending in the Court of Additional District Judge - IV, Samastipur to the Court of Principal Judge, Family Court, Patna is part of the chain of cases filed by the parties.

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3. The appellant and the respondent were married on 10.7.1981. Two children were born out of their wedlock. On 13.3.2002, the respondent filed petition under Section 13 of the Hindu Marriage Act, 1955 (for short, "the Act") in the Court of District Judge, Samastipur for dissolution of the marriage. The same was registered as Divorce Case No.21 of 2002 and was transferred by the District Judge to the Court of Additional District Judge - IV, Samastipur. After one month, the appellant filed petition under Section 9 of the Act for restitution of conjugal rights in the Family Court, Patna for award of maintenance. She also filed Maintenance Case No.133 (M) of 2002 in the same court.

4. On being noticed by the Court of Additional District Judge - IV, Samastipur, the appellant filed a petition under Section 24 of the Code of Civil Procedure for transfer of the divorce case from Samastipur to Patna on

the ground of personal inconvenience and also on the ground that simultaneous trial of all the cases at the same place will sub-serve the ends of justice.

5. The learned Single Judge of the Patna High Court declined the appellant's prayer primarily on the ground that if convenience of the wife is

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made basis for transfer of the matrimonial cases instituted by the husband, then there will be abundance of cases before the Principal Judge, Family Court, Patna, who will find it difficult to dispose of the suits within a reasonable time. At the same time, the learned Single Judge directed the respondent to pay Rs.1,000/- to the appellant over and above the travelling expenses so as to enable her to attend the hearing of the divorce case.

6. We have heard learned counsel for the parties and carefully perused the record. In our view, the reason assigned by the learned Single Judge for refusing to transfer the divorce case from Samastipur to Patna is legally unsustainable. The averments contained in the petition filed by the respondent under Section 13 of the Act suggest that genesis of the dispute between him and the appellant is her employment as Anganwadi worker. The respondent is unhappy with the appellant because of her refusal to give up the job and look after the family. The respondent has instituted the case at Samastipur apparently because he is serving in a residential school in that district. The appellant has filed the petitions for restitution of conjugal rights and maintenance at Patna because she is serving as Anganwadi worker at a nearby place. Unfortunately while disposing of the transfer petition filed by the appellant, the learned Single Judge overlooked the fact that it

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would be in the interest of the parties that all the cases filed by them are tried at one place and in that context, the convenience of the appellant will outweigh the inconvenience, if any, which may be caused to the respondent by transfer of the divorce case from Samastipur to Patna. If the appellant is required to contest the one case at Samastipur and prosecute two cases filed by her at Patna, she will certainly be put to serious hardship and this, in our

tried simultaneously.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed Order is placed on the file)