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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Transfer Petition (Civil) No.6 of 2007

Applicant

Rashmi Mishra, W/o Santosh Kumar Mishra, aged about 25 years, resident of Beladula, Kharraghat, PS Chakradhar, Raigarh (C.G.)

versus

Non-Applciant

Santosh Kumar Mishra, S/o Shri Nageshwar Mishra, aged about 34 years, R/o Qr.No.708/2, Wireless Colony, P/S Tarbahar, Bilaspur, Tahsil and District Bilaspur (C.G.)

Application under Section 24 of the Code of Civil Procedure

Present: Shri M.B.Gupta and Smt. Hamida Siddique, counsel for the petitioner.
Shri K.A.Ansari, Senior Advocate with Shri M.K.Sinha, counsel for the respondent.

Transfer Petition (Criminal) No.3 of 2006

Applicant

Santosh Kumar Mishra, S/o Shri Nageshwar Mishra, aged about 34 years, R/o Qr.No.708/2, Wireless Colony, P/S Tarbahar, Bilaspur, Tahsil and District Bilaspur (C.G.)

Non-Applciant

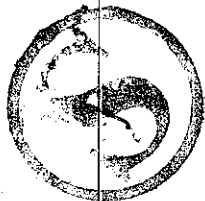
versus

Non-Applciant
Applicants

1. Rashmi Mishra, W/o Santosh Kumar Mishra, aged about 24 years,
2. Kumari Pihoo Mishra, D/o Santosh Kumar Mishra, aged about 6 months, minor, through mother Smt. Rashmi Mishra,

Both residents of Beladula, Kharraghat, PS Chakradhar, Raigarh (C.G.)

Application under Section 407 of the Code of Criminal Procedure



Present: Shri K.A.Ansari, Senior Advocate with Shri M.K.Sinha,
counsel for the petitioner.
Shri M.B.Gupta and Smt. Hamida Siddique, counsel for
the respondents.

ORAL ORDER

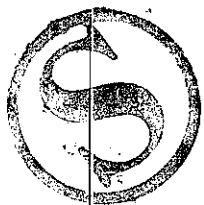
(Passed on this 31st day of March, 2009)

This order shall govern Transfer Petition (Civil) No.6 of 2007 and Transfer Petition (Criminal) No.3 of 2006.

(2) Transfer Petition (Civil) No.6 of 2007 has been preferred by Rashmi Mishra for transfer of Case No.50-A/2006 under Section 13(1)(ia) of the Hindu Marriage Act from Family Court, Bilaspur to Family Court, Raigarh. Transfer Petition (Criminal) No.3 of 2006 has been preferred by Santosh Kumar Mishra for transfer of M.J.C. No.64/2006 under Section 125 of the Code of Criminal Procedure from Family Court, Raigarh to Family Court, Bilaspur.

(3) Arguing for Rashmi Mishra for transfer of Case No.50-A/2006, Smt. Hamida Siddique, learned counsel urged that Santosh Kumar Mishra has not paid any amount towards maintenance to her and, therefore, she is unable to go to Bilaspur for attending Case No.50-A/2006. Reliance was placed on *Anjali Ashok Sadhwani vs. Ashok Kishinchand Sadhwani*, 2009 AIR SCW 790.

(4) On the other hand, Shri K.A.Ansari, learned Senior Advocate for the husband Santosh Kumar Mishra urged in Transfer Petition (Criminal) No.3 of 2006 that Santosh Kumar Mishra is on death bed and suffering from an incurable disease, i.e., Hepatitis 'B' and Liver-Cirrhosis. It was also urged by the learned Senior Advocate that due to his extreme ill-health, Santosh Kumar Mishra has not resumed duty and



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is, therefore, not receiving any salary. In these circumstances, learned Senior Advocate urged that it is impossible for Santosh Kumar Mishra to travel from Bilaspur to Raigarh. It was pointed out that on 20-9-2006 this Court had directed that Santosh Kumar Mishra shall be exempted from personal appearance before the Family Court, Raigarh for a period of two months.

(5) In the peculiar circumstances mentioned above, to balance the inconvenience faced by the wife and the serious illness of the husband, it is ordered that the Family Court, Bilaspur shall, on an application being filed on behalf of Rashmi Mishra, exempt her from personal appearance and allow her to appear through counsel in Case No.50-A/2006 except on the date of her evidence. As regards M.J.C. No.64/2006 pending before the Family Court, Raigarh, it is directed that the Family Court, Raigarh shall, on an application being filed on behalf of Santosh Kumar Mishra, exempt him from personal appearance and allow him to appear through counsel.

(6) With the above observations, Transfer Petition (Civil) No.6 of 2007 and Transfer Petition (Criminal) No.3 of 2006 are disposed of.

(7) A copy of this order be placed on the record of Transfer Petition (Criminal) No.3 of 2006.

**Sd-/
Dilip Raosaheb Deshmukh
Judge**