

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CTA no. 34/2011
CMA no. 39/2011

Date of order: 23.11.2012

Pooja Nayyar v. Sandeep Kumar Sawhney

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Appearing counsel:

For the Petitioner(s) Mr. Rajneesh Oswal, Advocate.

For the respondent(s) None.

- i) Whether to be reported in Press, Journal/Media : Yes/No
ii/ Whether to be reported in Digest/ Journal : Yes/No
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M. M. Kumar, CJ

1. Smt. Pooja Nayyar has filed the instant petition under Section 24 of the Code of Civil Procedure, 1977 for transferring the petition filed by her husband Sandeep Kumar Sawhney under Section 10 of the Hindu Marriage Act, pending in the Court of learned Principal District Judge, Srinagar to the Court of Additional District Judge (matrimonial Cases) Jammu. It is pertinent to mention that the respondent-husband has sought relief of dissolution of marriage in the aforesaid petition.

2. Brief facts of the case, as disclosed in the instant petition, are that the petitioner is a resident of Miran Sahib Tehsil R. S. Pura and she was married to the respondent in the month of June, 2010 at her village in accordance with Hindu rites and

customs. Soon after the marriage differences arose and eventually she was driven out from her matrimonial home forcing her to take shelter at her fathers house. It is stated that the husband of the petitioner is working in SKUAST and is presently posted at Srinagar. The respondent has filed the petition for dissolution of marriage at Srinagar by concealing the material facts including the fact of being the father of a girl child who is only three months of age. Petitioner has further stated that she has filed a petition under Section 488 Cr.P.C which is pending in the Court of learned Munsiff R.S.Pura. The respondent, off and on, is visiting Jammu to meet his parents and other family members but taking the advantage of his posting at Srinagar, has filed the petition at Srinagar. She has stated that being mother of a three month old child and a destitute lady she is not in a position to attend the hearing at Srinagar which is at a far away distance and if the matter is transferred to Jammu then she would be able to conveniently attend the hearing.

3. In the objections filed by the respondent-husband the prayer made by the petitioner has been opposed on the ground that petitioner was staying with him at Srinagar in a Hotel accommodation allotted to him and after the petitioner came to Jammu in connection with interview for the post of teacher, she

instead of going to her matrimonial house, went to her parental house and has not returned to Srinagar. He has denied the knowledge of birth of the girl child and has submitted that petitioner was staying with him at Srinagar but has made false allegations in the transfer application.

4. I have heard learned counsel for the petitioner and have perused the record.

5. It has come on record that the petitioner is living with her father at Miran Sahib Tehsil R. S. Pura, Jammu and she is not earning being unemployed. Even otherwise, the convenience of the wife in a case like the one in hand is required to be kept in view as has been held in the cases of *Uma Parekh v. Ajeet Pareek (2005) 9 SCC 600* and *Laxmi Devi v. Rajesh Kumar Sanadhyा (2002) 10 SCC 693*. In Laxmi Devi's case (supra) the long distance travel by the wife, who was also living with her father, was held to be a valid ground for transfer of the proceedings.

6. In the present case, the petitioner-wife is not in a position to incur expenses nor can she be subjected to long distance travel particularly with a small child of three months. The claim of the respondent-husband to the contrary is without substance when he admits the solemnization of the marriage at Jammu but still says that petitioner was staying with him at Srinagar

where he is employed and where the proceedings are pending.

The posting of the respondent at Srinagar would not give him any right to file the petition at Srinagar when he admits that marriage was solemnized at Jammu and he is permanent resident of Channi Himat Jammu.

7. As a sequel to the above discussion, this petition succeeds. The proceedings in case titled Sandeep Kumar Sawhney v. Pooja Nayyar, pending in the court of principal District Judge, Srinagar, are ordered to be transferred to the Court of Additional District Judge (Matrimonial Cases) Jammu. Registry to transfer the record of the case to the transferee Court with an intimation to the Principal District Judge Srinagar.

8. Parties are directed to appear before transferee Court on 24.12.2012.

(M. M. Kumar)
Chief Justice

JAAMU:
16.11.2012
Anil Raina, Secy.