

Dilip Vs. Vandana

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Court : Madhya Pradesh

Decided On : Jan-31-1992

Reported in : I(1992)DMC557

Judge : V.S. Kakje, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9, 10, 13 and 21A; [Indian Penal Code \(IPC\), 1860](#); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24

Appeal No. : M.C.C. No. 411 of 1991

Appellant : Dilip

Respondent : Vandana

Advocate for Def. : P.C. Vaya, Adv.

Advocate for Pet/Ap. : O.P. Chauhan, Adv.

Disposition : Case dismissed

Judgement :

V.S. Kokje, J.

1. This is an application for transfer of a case filed under Section 13 of the Hindu Marriage Act by the non-applicant in the Court of the District Judge, Ratlam to the Court of the Illrd Additional District Judge, Ujjain on the ground that the case filed

at Ujjain was filed earlier. Even before admission of this case, the non-applicant appeared and filed a reply with a counter prayer that the case of Ujjain be transferred to Ratlam.

2. With the consent of the parties, the case was finally heard. Shri O.P. Chouhan, the learned Counsel for the applicant submitted that since the applicant had filed a case for restitution of conjugal rights Under Section 9 of the Hindu Marriage Act on 20.6.1990 In the Court of the Illrd Addl. District Judge, Ujjain, the subsequent application Under Section 13-A of the Hindu Marriage Act filed by the non-applicant on 30.4.1991 before the District Judge, Ratlam had to be transferred to the Court at Ujjain as per S. 21A of the Hindu Marriage Act. Shri P.C. Vays, the learned counsel appearing for the non-applicant wife submitted that as the case earlier filed at Ujjain is for restitution of conjugal rights Section 21A of the Hindu Marriage Act did not apply. He further submitted that his counter prayer that the case in Ujjain be transferred to Ratlam on the ground of comparative convenience deserves to be allowed. He also referred to the affidavits of the non-applicant and her mother, setting out the circumstances in which it would not be safe for the non-applicant to come to Ujjain from Ratlam to attend the case.

3. A bare reading of Section 21-A of the Hindu Marriage Act would show that it will apply only when petitions under the Hindu Marriage Act, praying for a decree for judicial separation Under Section 10 or a decree for divorce Under Section 13 are filed and would not apply If one of the case is Under Section 9 of the Act for restitution of conjugal rights. As the applicant's petition is Under Section 9 of the Act S. 21A of the Act would not be attracted even though his petition is filed earlier. There is no other ground set out in the application on which transfer of the case instituted in Ratlam has been sought. On the contrary the non-applicant in her application has alleged that she does not feel safe to travel up to Ujjain and attend the case there because of the threats given to her by the applicant. She has also pleaded that he cannot bear the expenses of attending the case at Ujjain with escorts. Alongwith the application of the non-applicant affidavits have also been filed in support of the contentions raised.

4. Considering the over-all facts and circumstances it appears to be just and proper to reject the prayer of the applicant and to allow the prayer of the non-applicant's case is only of restitution of conjugal rights and since the prayer for transfer of the case at Ratlam is being rejected, he will have, in any case, to go to Ratlam to appear in that case. It would be in the fitness of things that the Court which is considering the prayer for divorce should also to consider the prayer for restitution of conjugal rights.

5. It is, therefore, directed that the Hindu Marriage Act Case No. 26-A/ 90 pending in the Court of the Illrd Addl. District Judge, Ujjain shall stand transferred to the Court of the District Judge, Ratlam for being disposed of long with the petition under S. 13 of the Hindu Marriage Act, pending before that Court. Parties to appear before the District Judge, Ratlam on 16.2.1992 for further proceedings. The record of the case pending at Ujjain shall positively be transmitted by the Court of the Illrd Addl. District Judge, Ujjain to the District Judge, Ratlam by that date with these directions this case is disposed of.