

# SUPREME COURT OF INDIA

Geeta Sahu

Vs.

Ravinder Prasad Sahu

T.P.(Civil)No.262 of 2006

(S.B.Sinha and V.S.Sirpurkar,JJ.)

07.02.2008

## ORDER

1. Petitioner is before us seeking transfer of a matrimonial proceeding initiated by the respondent for obtaining a decree for divorce against her being Suit No. 447/2006 pending before the Addl.District & Sessions Judge, Tis Hazari Courts, Delhi to the Family Court at Giridih, Jharkhand.
2. Petitioner is residing in village Pachamba, District-Giridih, Jharkhand. She states that it will be inconvenient for her to attend the Court proceedings at Delhi.
3. A counter affidavit has been filed on behalf of the respondent wherein it is stated that as the petitioner did not appear in the proceedings, ex-parte evidence had been led and the matter was to come up for final arguments on 20.5.2006. At that stage only this petition for transfer was filed and stay of further proceedings was obtained.
4. Learned counsel appearing on behalf of the petitioner would urge that having regard to the wide discretionary power conferred upon this Court in terms of Section 25 of the Code Civil Procedure, this Court may transfer the aforementioned Suit No.477/2006 from Delhi to the Family Court at Giridih, Jharkhand.
5. We have noticed hereinbefore that the matter has been heard ex- parte. It is only pending for advancing arguments and pronouncement of judgment. At this stage even a petition for setting aside the ex-parte order would not be maintainable in view of the decision of this Court in Arjun Singh Vs.Mohindra Kumar and Ors. - 1964 AIR (SC) 993. It is only when an ex-parte decree passed as against the petitioner, if any, is set aside the petitioner would be entitled to move an application for transfer. Our attention has been drawn to a decision of this Court in Usha Vs. Palisetty Mohan Rao -2002 (X) SCC 544 wherein an ex-parte decree had been passed. It appears that on an interlocutory application filed by the petitioner therein, the ex-parte decree had been set aside and it was in that context the application for transfer was allowed.

6. Reliance has also been placed on Uma Parekh @ Uma Joshi @ Pinku Vs. Ajeet Pareek @ Govind Pareek and Ors. wherein Usha(supra) has been followed.

7. We have our serious reservations about the correctness of the aforementioned decision as to whether even in exercise of discretionary power conferred under Article 142 of the Constitution of India, this Court could have set aside an ex-parte decree passed by the trial Court in a proceeding under Article 25 of the Hindu Marriage Act, particularly, in view of the fact that by reason thereof the valuable right of an appeal of an aggrieved party is thereby taken away. However, it is not necessary to go into the said question in this case, as no ex-parte decree has yet been passed. No application before this Court has also not been filed. For the reasons aforementioned, we do not find any merit in this petition. The transfer petition is dismissed subject to the observations made hereinbefore.