

JURISDICTION OF THE SUPREME COURT TO TRANSFER MATRIMONIAL CASES FROM ONE STATE TO ANOTHER

INTRODUCTION

The Supreme Court of India has three types of Jurisdiction namely Advisory, Appellate, and Original jurisdiction. One of the important aspects of Original Jurisdiction of the Hon'ble Supreme Court is the Jurisdiction of the Hon'ble Supreme Court to transfer cases more particularly matrimonial matters from any Court in one state to a Court in another state.

Though it is true that it is only the competent District Courts or Family Courts which have the Jurisdiction to deal with and adjudicate upon the matrimonial disputes, it is worth noting that the Hon'ble Supreme Court has statutory powers in such disputes/cases when it pertains to transferring them from a Court in one State to another Court in another State.

STATUTORY PROVISIONS

The powers of the Hon'ble Supreme Court to transfer matrimonial disputes (either a civil case or a criminal one) have been expressly provided in the Code of Civil Procedure as well as the Criminal Procedure Code. The Transfer Petitions which are civil in nature such as divorce, custody of children, etc., are filed and are dealt with by the Hon'ble Supreme Court under Section 25 of the CPC, 1908. However, if the Petition/case is criminal in nature such as a maintenance petition by the wife under Section 125 of CrPC, then in that event, Hon'ble Supreme Court can transfer it under Section 406 of the CrPC, 1974. Both the said legal provisions empowers the Supreme Court to transfer a suit, appeal, or complaint relating to a Matrimonial Dispute from any court in one state to a court in another state. This power may be exercised by the Hon'ble Supreme Court on the basis of facts of the case & circumstances of

parties and if such transfer is expedient to meet the ends of justice.

Pertinently, the Hon'ble Supreme Court has exclusive powers only when these matrimonial disputes are to be transferred from a court situated in a particular state to a court situated in another state, i.e., inter-state transfers. In contrast, only the respective High Courts of the States have the power to deal with these transfers intra-state.

DOCTRINE OF FORUM CONVENIENS

The powers granted to the Apex Court under the said provisions are based on the 'doctrine of forum conveniens,' also known as the doctrine of 'forum non conveniens.' The Hon'ble Supreme Court has discussed this concept in the case of **Gana Saraswathi v S. Raghu Prasad (2000) 10 SCC 177**. In the said case, Hon'ble Supreme Court has stated that to advance the interests of justice, the Courts should entertain the matter at the best forum with competent jurisdiction where a fair trial can be held.

However, the question then arises *what is the best forum, and how is it to be determined?* It is a general presumption

that normally the Petitioner/Plaintiff files the suit at the best forum only. Therefore, the burden is on the party seeking the transfer of the case to prove that the balance of convenience is in its favor and how it will face irreparable losses if the Petition is not transferred.

The Hon'ble Supreme Court in the matter of **Dr.Subramaniam Swamy vs. Ramakrishna Hegde, AIR 1990 SC 113** held that while deciding on a Transfer Petition, the Court has to look into the balance of convenience as well as the fact that the rights of the other party/non Applicant Party are not compromised or prejudiced if the Petition is allowed.

Further, Hon'ble Supreme Court in the case of **Harita Sunil Palab v State of NCT of Delhi, (2018) 6 SCC 358** held that the balance of convenience of the parties does not mean the convenience of the Petitioner alone, who approaches the Court on misconceived notions of apprehension.

GROUNDS FOR TRANSFER OF A CASE

There is no specific ground on which the Hon'ble Supreme Court is bound to transfer a case from one Court to another.

It is a discretionary power that is exercised when it is 'expedient for the ends of justice.' The party, thus, has to prove that there would be miscarriage of justice in case transfer of case is not allowed by the Apex Court. The Hon'ble Supreme Court in the case of **Vimi Mathur vs. Vikas Mathur** (2004) 13 SCC 435, allowed the transfer of the case filed in Ghaziabad by the Husband to Patna as two other cases between the parties were already pending in Patna.

In the matter of **Mona Aresh Goel v Aresh Satya Goel** (2000) 9 SCC 255, Hon'ble Supreme Court found it proper to transfer the divorce proceedings from Mumbai to Delhi as the wife had no independent income and was staying with her parents who resided in Delhi. Further, Hon'ble Supreme Court also considered the fact that the Petitioner was just a 22-year-old woman who could not have traveled and stayed alone in Mumbai during the proceedings.

Therefore, for getting a matter transferred by the Hon'ble Supreme Court from a court situated in a particular state to a court situated in another state, there should be certain reasonable grounds such as serious illness or medical issues of a

party, custody of children below a particular age, maintenance of old parents solely dependent on a party, or if the witnesses live in another state if there is a criminal matter.

Further, financial incapability on account of the party cannot always be the sole ground for transferring of a case. The court, in such a case, instead of transferring the case, may instead direct the husband to bear the travel, lodging, and boarding expenses of the wife and/or person accompanying for each hearing. Infact, the Hon'ble Supreme Court took the same approach in the case of **Gargi Konar v Jagjeet Singh** (2005) 11 SCC 446, where the wife had filed a transfer petition to transfer from Bhatinda, Punjab, to Burdwan, West Bengal, on the ground of her financial incapacity.

Furthermore, in **Deepika v Maruthi Kathare** (2005) 11 SCC 433 and **Anju v Pramod Kumar** (2005) 11 SCC 186, Hon'ble Supreme Court took a different approach and transferred the case to a third place altogether. Thus, if it deems fit, the Court may even adopt a middle path and transfer the proceedings to a neutral place or an adjacent district,

especially when one party apprehends a threat to his/her life at a particular place.

CONCLUSION

It is true that if more than one court has jurisdiction under the CPC to try the suit, the plaintiff, as 'dominus litis', has a right to choose the court. However, it must also be kept in mind that a trial in the chosen forum does not result in a denial or miscarriage of justice.

There are many matrimonial cases wherein parties to the cases desire their case to be transferred from the Court of one State to the Court of competent jurisdiction in another State and the legal remedy for the same would be to file a Transfer Petition before the Hon'ble Supreme Court under Section 25 CPC or Section 406 of Cr.PC and the Hon'ble Supreme Court based on the facts and circumstances of each case may direct transfer of said case from the Court of one State to the Court of another State for the purpose of achieve the ends of justice.

DISCLAIMER

The present Article intends to provide brief and general information on the above mentioned subject & in no manner provides exhaustive details on the same. This document shall not be construed as a legal advise & further, shall not form as a base to take any decision without seeking proper

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