



Transfer of Petition - An effective tool to meet the ends of Justice

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This is the provision inserted in Code of Civil Procedure under section 25 reads as under-

Power of Supreme Court to

transfer suits, etc.

(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by a motion which shall be supported by an affidavit.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either retry it or proceed from the stage at which it was transferred to it.

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(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.

Scope

This section enables the plaintiff or the defendant or the respondent to get the transfer of the suit to their state instead of the other party's state where the said suit is entertained by the High Court or any other court. This provision is invoked generally in the matrimonial cases, divorce cases or custody cases. The main objective of the Hon'ble Court is to meet the ends of the justice in any possible way. The transfer of petition can be filed in Hon'ble Supreme Court after filing of charge sheet by investigating agency in the court entertaining the said suit.

Impact of the Section 25 C.P.C. on society

There are more than 2 lakhs of cases of matrimonial matters including custody, divorce and domestic violence cases, our courts dealing in each court. As we know our society is influenced under corruption by the people whose motives are ulterior, therefore our legislature and courts have to keep in mind many aspects while administering justice to the victim. This is the main object of the said section to deliver the justice to the victim.

From the beginning people assume that the section of women is weaker as compared to section of men in the society, so it needs to be strengthened. Same on this assumption Hon'ble Supreme Court is allowing the Transfer of Petition.



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According to recent judgements probability of getting relief by women is higher under this section.

Parameters Court Consider while allowing the Transfer of Petition

1. Distance Travel to attend the proceedings.
2. Reason how one is not capable to attend the proceedings.
3. How Justice can be influenced at the place where proceedings of the suit are taking place.
4. Merits of the case
5. Allegations

Recent Judgements in favor of women

1. Sneh Sweta Singh vs Manish Singh on 15 November, 2018, TP No.- 1147/2018

Mother is of 65 years old lady and suffering from several disease like Joints pain, fever, digestion problem etc. currently her mother is not keeping well with her health and she needs regular medical check-up and constant care in Bangalore. Petitioner's daughter is 8 years old and is going to school in Bangalore. Both are totally depend on petitioner. In such circumstances she alone has to travel leaving her old and ailing mother and her 8 years old daughter behind a distance of 2200 Kms from Sarjapur in Bangalore to the State of Lucknow to contest the matrimonial suit filed by the respondent. Therefore, court allow the transfer of petition.

2. Poonam Aggarwal vs Saurabh Aggarwal on 7 September, 2018, TP No.- 703/2018

Petition was allowed by the Hon'ble Court as the petitioner was the sole earner and her father was dependent on her as they were facing financial crisis.

3. Boby Rani alias Babita Vs. Suresh Kumar, 2011(1) HLR 284

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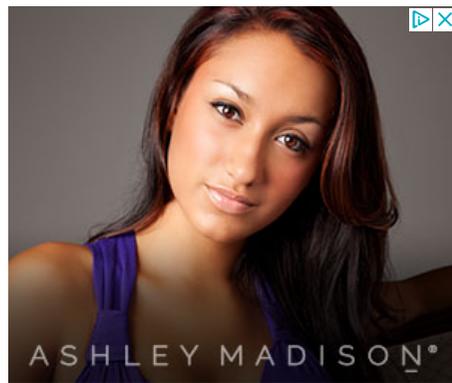


Wife has not any source of income and she is 70 % handicapped. Her parents are not in a position to bear the traveling expenses as their economic condition is weak.

4. In the case of *Mona Aresh Goel vs Aresh Satya Goel* on 21 March 2000, wherein the transfer petition was filed by the wife to transfer the divorce proceedings taken by the husband in Bombay to Delhi, where she stayed with her parents. The transfer petition avers that the wife had no independent income and that her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. She averred that she is twenty-two years old and cannot travel to and stay in Bombay alone for, there is no one in Bombay with whom she can stay. Hence the court allowed such a petition in these circumstances.

5. A very poignant and logical judgment was observed in *Premlata Singh v. Rita Singh* wherein this Court had not transferred the proceedings but directed the husband to pay for traveling, lodging and boarding expenses of the wife and/or person accompanying her for each hearing. The said principle was also followed in *Gana Saraswathi v. H. Raghu Prasad*.

6. In the case of *Santhini vs Vijaya Venkatesh* on 9 October 2017, the court cited various cases. The court before reaching the final conclusions made a reference to the following cases, it made apt to refer to the decisions that have been noted in *Krishna Veni Nagam*.



7. In *Mona Aresh Goel* (as discussed above) the three-Judge Bench was dealing with the transfer of the matrimonial proceedings for divorce that was instituted by the husband in Bombay. The prayer of the wife was to transfer the case from Bombay to Delhi. The averment was made that the wife had no independent income and her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. That apart, various inconveniences were set forth and the husband chose not to appear in the Transfer Petition. The Court, considering the difficulties of the wife, transferred the case from Bombay to Delhi.

8. In *Lalita A. Ranga*, the Court, taking note of the fact that the husband had not appeared and further appreciating the facts and circumstances of the case, thought it appropriate to transfer the petition so that the wife could contest the proceedings. Be it noted, the wife had a small child and she was at Jaipur and it was thought that it would be difficult for her to go to Bombay to contest the proceedings from time to time.

9. In *Deepa's* case, the stand of the wife was that she was unemployed and had no source of income and, on that basis, the prayer of transfer was allowed. In *Archana Rastogi*, the Court entertained the plea of transfer and held that the prayer for transfer of matrimonial proceedings taken by the husband in the Court of District Judge, Chandigarh to the Court of District Judge, Delhi deserved

acceptance and, accordingly, transferred the case. Similarly, in Leena Mukherjee, the prayer for transfer was allowed.

10. In Neelam Bhatia, the Court declined to transfer the case and directed the husband to bear the to-and-fro traveling expenses of the wife and one person accompanying her by train whenever she actually appeared before the Court.

11. In Soma Choudhury, taking into consideration the difficulties of the wife, the proceedings for divorce were transferred from the Court of District Judge, South Tripura, Udaipur (Tripura) to the Family Court at Alipore (West Bengal).

12. In Anju Ohri case, the Court, on the foundation of the convenience of the parties and the interest of justice, allowed the transfer petition preferred by the wife.

13. In Vandana Sharma, the Court, taking note of the fact that the wife had two minor daughters and appreciating the difficulty on the said bedrock, thought it appropriate to transfer the case and, accordingly, so directed.



Kapil Chandna
on 04 December 2018



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