



3. The petitioner and the respondent got married on 28.02.2002. Two children were born in the wedlock on 31.08.2007 and 27.01.2011.

4. Disputes arose, leading to the respondent filing a petition in HMP No.11 of 2016 on the file of the Court of Senior Civil Judge, Palanpur, Gujarat, under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights. The petition was transferred to the Family Court Banaskantha, Palanpur, Gujarat and re-numbered as Family suit No. 33 of 2016.

5. The petitioner earlier came up with a transfer petition in T.P. (C) No.615 of 2016 seeking transfer of the said proceeding to a competent court in Mumbai. But it was dismissed by this Court by an order date 19.04.2016.

6. After three years of the dismissal of the said Transfer Petition, the petitioner has come up with the present Transfer Petition on the ground that there are change of circumstances warranting a fresh look. The change of circumstances pleaded by the petitioner are:-

(i) that her mother died on 02.02.2017 leaving an emotional vacuum and also making it impossible to leave two minor daughter in Mumbai to attend to the hearings at Palanpur; and

(ii) that even the application filed by her before the Family Court, Palanpur to direct the respondent to provide the expenditure for her travel to Palanpur was dismissed and that the Family Court at Palanpur has also made it difficult for her to defend the case, by listing the case for hearing on 2 to 3 occasions every month and imposing penalties upon the petitioner whenever a request for adjournment is sought or when the Legal Aid lawyer appointed on her behalf did not attend the Court.

7. The respondent has filed a counter affidavit contending *inter alia* that the proceedings for restitution of conjugal rights have already reached the stage of judgment and that once a request for transfer got rejected on an earlier occasion, a second petition cannot be maintained.

8. But as rightly contended by the learned counsel for the petitioner, the dismissal of a petition for transfer, may not operate as *res judicata*, when a fresh petition is filed on change of circumstances. The first transfer petition in T.P.(C)No.615 of 2016 was dismissed *in limine* without even a notice being ordered to the respondent. The order dated 19.04.2016 dismissing the said Transfer Petition reads as follows:-

“Heard learned counsel for the petitioner.  
The transfer petitioner is dismissed.  
Application for stay also stands disposed of.”

9. Therefore, the present petition for transfer cannot be opposed solely on the ground that the earlier petition was dismissed. But at the same time, the petitioner will have to satisfy the court that there are change of circumstances and that there are sufficient grounds made out.

10. It appears that after the first Transfer Petition was dismissed on 19.04.2016, the pleadings in the proceedings for restitution of conjugal rights got completed and the respondent-husband, who was the petitioner before the Family Court examined himself in chief on 11.07.2017 and 12.07.2017. He was cross examined by the

counsel for the petitioner herein after more than 17 months, on 21.12.2018.

11. Thereafter the petitioner herein, who was the respondent before the Family Court filed an affidavit in lieu of examination in chief on 03.05.2019. However, the Family Court discarded the evidence of the petitioner herein and struck off her right of evidence by an order 22.07.2019. It is only thereafter that the petitioner has come up with the above Transfer Petition. The petitioner's mother also passed away in 2017 and she was obviously unable to defend herself effectively in the court where the proceedings are pending.

12. While the hardship, both social and financial, pleaded by the petitioner deserves favourable consideration, the transfer of the case at this stage of the proceeding may not be appropriate. As seen from the print out of the history of the case, downloaded from the website of the Family Court, Palanpur, the case was posted for final arguments on 02.08.2019, 14.08.2019, 27.08.2019 and 09.09.2019. Thereafter, the case was posted for judgment on 30.09.2019. This Court granted stay of further proceedings only on

04.10.2019. The petitioner was fortunate that the judgment was not pronounced on 30.09.2019.

13. When a case is at its final stage, this Court will be extremely reluctant to order the transfer, as it may derail the entire process.

14. But at the same time, two major grievances of the petitioner have to be addressed namely:-

- (i) the expenses for her travel from Mumbai to Palanpur; and
- (ii) the evidence of her side getting rejected.

It appears that the petitioner's application for payment of travel allowance was rejected by the Family Court and the petitioner moved the High Court by way of a special leave application. The fate of the same is not known. Even the copy of the order dated 27.08.2018 passed by the Family Court rejecting the prayer for travel allowance is not enclosed. However, it does not bar this Court from passing appropriate orders in the interest of justice.

15. Similarly, the second issue can also be taken care of by permitting the petitioner to move an application for reopening the evidence on her side and directing the Court to allow the cross

examination of the petitioner. Once these 2 issues are addressed, the case can be allowed to reach its logical end in the very same court.

16. Therefore in fine, the Transfer Petition is disposed of to the following effect:-

- (i) The prayer for transfer is rejected;
- (ii) The petitioner is permitted to move an application for reopening of her evidence before the family Court. The application may be allowed to be filed on line if such a facility is available. Else, it may be permitted to be filed through counsel without the petitioner having to undertake a travel. The Family Court may take a lenient view on the said application and have the evidence on the side of the petitioner restored. Thereafter the case may be posted for the cross examination of the petitioner. For facilitating the cross examination of the petitioner by the counsel for the respondent-husband, the Court may be granted a firm date. On the date so fixed, the petitioner shall appear before the Family Court. The respondent shall ensure that the cross

examination of the petitioner is carried out without fail by the counsel for the respondent. No request for any adjournment on behalf of the respondent shall be allowed;

(iii) On all occasions except the date on which the petitioner is to be cross examined, the petitioner may be permitted by the Family Court to be represented by a counsel without being present. If Video Conferencing facility is available, the petitioner may be granted the said facility;

(iv) On every occasion when the family Court wants the physical presence of the petitioner, the respondent shall pay a sum of Rs.10,000/- to the petitioner, towards expenses for travel and stay. If the respondent fails to pay, the petitioner will be at liberty to approach this court

Pending applications(s) if any shall also stand disposed of.

.....J.  
**(V. Ramasubramanian)**

New Delhi

January 29, 2021