



2025:AHC-LKO:82682

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

TRANSFER APPLICATION (CIVIL) No. - 225 of 2025

Nagendra Sharma And Another

.....Applicant(s)

Versus

The State Of U.P. Through Principal Secretry Home
Civil Secretariat Lucknow And Another

.....Opposite
Party(s)

Counsel for Applicant(s)	: Anurag Singh Chauhan, Ananya Singh Chauhan, Shameem Jahan
Counsel for Opposite Party(s)	: C.S.C., Amrendra Nath Tripathi, Vijay Nandan Mani Tripathi

Court No. - 20

HON'BLE SYED QAMAR HASAN RIZVI, J.

1. Heard Sri Anurag Singh Chauhan, learned counsel for the Applicants; Sri Abhishek Kumar Pandey, learned Additional Chief Standing Counsel along with Sri Mohammad Kaseem, learned Standing Counsel appearing on behalf of the State-opposite party No. 1; and Sri Amrendra Nath Tripathi, learned Senior Advocate assisted by Sri Vijaya Nandan Mani Tripathi, learned counsel for the opposite party No.2.

2. By means of the present Application filed under Section 24 of the C.P.C., the Applicants have prayed for the following relief:

"(i) Stay the all proceedings relating Miscellaneous Case No.52/2019, 'Smt. Sarla Sharma versus Nagendra Sharma' pending before the learned Principal Judge, Family Court, District- Gonda connected with the divorce petition vide Regular Suit No. 1006/2017, 'Nagendra Sharma versus Smt. Sarla Sharma' under Section 13 of Hindu Marriage Act, 1955, and moreover this Hon'ble Court may kindly be pleased to transfer the above said case to any competent and appropriate at district Lucknow having jurisdiction to entertain the same, in the larger interest of justice.

(ii) Issue any other order or direction by which this Hon'ble Court may deem fit, just and proper under the facts and circumstances of the case in favour of petitioners, in the interest of justice."

3. The contention of the learned counsel for the Applicants is that the marriage of the first Applicant namely Nagendra Sharma with the second Opposite party namely Smt. Sarla Sharma was dissolved vide ex-parte Judgment and Order dated 16.01.2019 passed by the Court of learned Principal Judge, Family Court, Gonda in Case No.1006 of 2017 (Nagendra Sharma versus Smt. Sarla Sharma), under Section 13 of the Hindu Marriage Act, 1955.

4. The second Opposite party herein preferred an application for recall of the ex-parte order dated 16.01.2019 along with an application for condonation of delay, before the learned Principal Judge, Family Court, Gonda on 29.05.2019 and for the Restoration of the Regular Case No. 1006 of 2017 (Nagendra Sharma versus Smt. Sarla Sharma), under Order IX Rule 13 read with Section 151 C.P.C.

5. It is submitted by the learned counsel for the Applicant that the said application for Recall of Order dated 16.01.2019 was filed by the second Opposite party after a lapse of about four and half (4 ½) months, however, the same was entertained by the learned Court and registered as Miscellaneous Case No. 52 of 2019. Since then, the said matter is pending for adjudication.

6. The learned Court of Principal Judge, Family Court, Gonda, by registering the case on 29.05.2019, issued notice to the first Applicant herein and on the same day without affording any opportunity of hearing to him, passed an order whereby the operation of the Order dated 16.01.2019 was stayed.

7. In the memo of the instant Application it is alleged that while returning from the Family Court on 18.08.2022 after attending the Court proceeding, the Applicant No. 1 was attacked by four (4) persons who not only threatened him of dire consequences but tried to snatch his belongings. It is also alleged that he was abused by the said persons and was told not to be seen in the District Court in future. The submission of the learned counsel for the applicants is that the first Applicant got scared by the said incident, however, he preferred applications to the concerned police station as well as to the Superintendent of Police, Gonda and also on the IGRS Portal, reporting the said incident to the authorities.

8. The Applicant No.1 preferred a Transfer Application before the Court of learned Principal Judge, Family Court, Gonda, which was registered as Miscellaneous Case No. 42 of 2025 on 10.04.2025 seeking transfer of the Miscellaneous Case No. 52 of 2019 from the learned Family Court No.1 to any other Court, levelling serious allegations against the Presiding Officer hearing the aforesaid case.

9. The learned Principal Judge, Family Court, Gonda vide detailed judgment and order dated 24.07.2025 rejected the aforesaid Transfer Application. The operative portion of the Order dated 24.07.2025 is extracted herein-below for ready reference:

"प्रकीर्ण वाद सं० 52/2019 प्राचीनतम वाद है, यदि प्रार्थी को उक्त प्रकीर्ण वाद में अपर प्रधान

न्यायाधीश, परिवार न्यायालय, कक्ष सं०- 1, गोंडा द्वारा पारित किसी भी आदेश से कोई क्षुब्धता है, तो वह अपीलीय न्यायालय के समक्ष अग्रेतर कार्यवाही करने के लिए स्वतंत्र है।

इसके अतिरिक्त प्रकीर्ण वाद सं०-52/2019 की पत्रावली के आदेश-पत्रक के परिशीलन से यह भी प्रकट होता है कि प्रार्थी नागेन्द्र शर्मा द्वारा प्रस्तुत मामले को विलंबित करने के लिए तरह-तरह के भरसक प्रयास किये जा रहे हैं, जिस कारण उक्त पत्रावली का निस्तारण वर्ष 2019 से लेकर अब तक नहीं हो पा रहा है तथा उक्त पत्रावली में प्रार्थी द्वारा अनावश्यक रूप से बार-बार मौका प्रार्थना-पत्र भी प्रस्तुत किये जा रहे हैं। अतः उपरोक्त तथ्य एवं परिस्थितियों से ऐसा प्रतीत होता है कि प्रार्थी द्वारा मात्र प्रस्तुत मामले को विलंबित करने के उद्देश्य से प्रार्थना-पत्र 3 ग प्रस्तुत किया गया है। ऐसे में प्रार्थना-पत्र 3 ग (स्थानान्तरण प्रार्थना-पत्र) के कथनों के आधार पर उक्त प्राचीनतम वाद/पत्रावली को अन्तरित किये जाने का उचित आधार नहीं है और तदनुसार प्रार्थना-पत्र 3 ग (स्थानान्तरण प्रार्थना-पत्र) निरस्त किये जाने योग्य है।

आदेश

प्रार्थना-पत्र 3ग (स्थानान्तरण प्रार्थना-पत्र) निरस्त किया जाता है।"

10. It is also stated by the learned counsel appearing on behalf of the Applicants that the first applicant filed a Complaint Case No. 182 of 2013 against the opposite party No.2 under Section 504, 506, 323, 452, 380 I.P.C., Police Station- Sarai Aquil, District- Kaushambi. It is further stated that the opposite party No.2 herein preferred a Petition under Section 482 Cr.P.C. before this Court at Allahabad. The said Petition was registered as Criminal Misc. Application U/s 482 No. 27891 of 2013. Taking into consideration the statement made by the parties therein that the parties had settled the matrimonial dispute and were living together, the Court vide Order dated 22.08.2014 allowed the said Application filed under Section 482 Cr.P.C. and quashed the proceedings of Complaint Case No. 182 of 2013.

11. It is also alleged in the present transfer petition that despite the aforesaid settlement, the opposite party No.2 did not withdraw the Criminal Case No. 142 of 2013 lodged under Section 498-A, 323, 504, 506 I.P.C., Police Station- Krishna Nagar, Lucknow and the Case No. 1812 of 2013 under Section 12 of the Domestic Violence Act, therefore, the Applicant No.1 preferred contempt application before this Court at Allahabad which is registered as Case No. 6504 of 2019. The said application is still pending for consideration.

12. The ground for seeking the transfer of the pending proceedings having Misc. Case No. 52 of 2019 from the District Gonda to Lucknow, as pressed by the learned counsel for the applicants is that since the Applicant No.1 is the resident of Lucknow and the second opposite party namely Smt. Sarla Sharma is also now residing at Lucknow and is engaged in a private job, therefore, it will be convenient for the parties to pursue the case at Lucknow. The other ground taken by the learned counsel for the applicants is that the Applicant No.1 has reasonable apprehension that if he will go to Gonda to participate in the proceedings of the Misc. Case No. 52 of 2019, he would be harmed by the opposite party No.2.

13. It is also alleged in the instant transfer petition that the Court concerned at Gonda is favouring the opposite party No.2 in the pending proceedings.

14. Per contra, the learned Senior Advocate appearing on behalf of opposite party No.2 vehemently opposed the instant transfer application by contending that the instant transfer petition suffers from material concealment of facts and as such the same is liable to be rejected. He contended that the opposite party No.2 after coming to know of passing of the ex-parte judgment and order dated 16.01.2019, by means of which the marriage between the Applicant No.1 and opposite party No.2 was declared dissolved; preferred a Recall Application on 29.05.2019 whereby the fraudulent conduct of the applicant and the manner in which he misrepresented the facts before the Court to obtain the ex-parte order dated 16.01.2019, was placed before the Court. The learned Court after taking into consideration the factual matrix as narrated by the opposite party No.2 herein, entertained the said application under Order IX Rule 13 C.P.C and issued notice to the applicant herein and stayed the operation of the Order dated 16.01.2019.

15. It is also vehemently asserted by the learned Senior Counsel appearing on behalf of the opposite party No.2 that the applicants herein filed the instant transfer petition without disclosing the material fact that the order dated 29.05.2019 passed by the learned Family Court was challenged by the Applicants before this Court by means of a writ petition having Writ- C No. 6354 of 2022, and the same was dismissed by this Court vide order dated 18.10.2024. He further submitted that the present applicants have not disclosed the fact with regard to the filing of the First Appeal Defective No. 83 of 2025 (Nagendra Sharma versus Smt. Sarla Sharma) on the same subject matter of dispute before the Hon'ble Division Bench of this Court, by them. However, the said appeal, on the basis of the prayer being made by the learned counsel for the applicant, was consigned to record as withdrawn, vide Order dated 11.04.2025.

16. The argument of the learned Senior Advocate is that the Regular Case No.1006 of 2017 (Nagendra Sharma versus Smt. Sarla Sharma), under Section 13 of the Hindu Marriage Act, 1955, was filed by the Applicant No.1 himself before the Court of learned Principal Judge, Family Court, Gonda and now at this stage, when the proceedings under Order IX Rule 13 C.P.C. in respect of the ex-parte judgment and order dated 16.01.2019 is almost ripe for final disposal where the learned Court at Gonda has entertained the matter and passed an interim order dated 29.05.2019; the Applicant has no occasion to pray for the transfer of the proceeding to the place of his choice. He further submits that instant Transfer Application is nothing but a delaying tactic on the part of the applicants to stall the pending proceedings of the Misc. Case No. 52 of 2019.

17. Heard the learned counsel for the parties and perused the material available on record. The ground on which the applicants have sought the transfer of the proceedings of the Misc. Case No. 52 of 2019, pending under Order IX Rule 13 read with Section 151 Civil Procedure Code, is three-fold. Firstly, the Applicants have suspicion that they may not get unbiased trial at Gonda. Secondly, the Applicant No.1 has apprehension of some mishappening to him in pursuing the case at Gonda under the alleged threat

from the side of the opposite party No.2. Thirdly, it is convenient for the parties to pursue their case at Lucknow as the applicant is the resident of Lucknow and now as per him, the opposite party No.2 has also started living at Lucknow.

18. Looking to the allegation made by the applicants herein regarding alleged inclination of the concerned Court towards the opposite party No.2; the same is found totally bald and baseless as there is nothing on record to establish any bias on the part of the learned Presiding Officer. A general statement to the effect that the concerned court is doing favour to the other side, is not sufficient for the purpose of establishing any bias. Needles to say that while dealing with the case, the Presiding Officer of the Court has to pass several orders depending upon the facts of the case and as the circumstances warrant. In that process, orders adverse to the party cannot be the reason to doubt the fairness of the Presiding Officer and the parties do have legal remedies to challenge the same before the higher forums.

19. In the instant case, the allegation of the applicants that the learned Family Court at Gonda unlawfully entertained the Application under Order IX Rule 13 read with Section 151 C.P.C. and the passing of the order dated 29.05.2019 reflects the bias on the part of the Court concerned, is not at all acceptable as the applicant challenged the said order by means of writ petition having Writ- C No. 6354 of 2022, inter alia, praying for the following relief:

"(i) To issue a writ, direction or order in the nature of Prohibition to refrain the O.P. No.1 from acting beyond jurisdiction by initiating proceedings under Order IX Rule 13 read with Section 151 C.P.C. in Case No. 52 of 2019- Smt. Sarla Sharma versus Nagendra Sharma & another for recalling the judgment dated 16.01.2019.

(ii) To issue a writ, direction or order in the nature of Certiorari to quash/ set aside the ex-parte orders dated 29.05.2019 (Annexure Nos. 1 & 2) and order dated 22.08.2022 (Annexure No.13) passed by the O.P. No.1 in Case No.52 of 2019- Smt. Sarla Sharma versus Nagendra Sharma & Another."

The Court did not accept the pleas of the Applicant/petitioner and dismissed the Writ- C No. 6354 of 2022 (Nagendra Sharma And Another versus Court Of Principal Judge Family Court Gonda And Another) by a detailed judgment and order dated 18.10.2024. Thus, with the dismissal of the said writ petition, the allegation of unlawful entertainment of the proceeding of the Misc. Case No. 52 of 2019 by the concerned Court, has been shattered.

20. The Hon'ble Supreme Court in the case of **Kumaon Mandal Vikas Nigam Ltd. Versus Girja Shankar Pant and others; reported in (2001) 1 SCC 182**, has been pleased to hold that mere general statement will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to the existence of

any element of bias which has resulted in the miscarriage of justice.

21. In so far as the perception of threat from the opposite party No.2 to the applicant is concerned, the same is not sustainable as no credible material has been placed by the applicants before this Court to substantiate the same and to justify the prayer for transfer of the proceedings on that ground. Mere allegation without any credible evidence cannot be taken as granted to transfer the proceedings from one place to another.

22. Coming to the third ground taken by the applicant for transfer of the proceeding from the Court at Gonda to Lucknow that since the applicant is the resident of Lucknow and now the opposite party No.2 is engaged in a private job at Lucknow and is residing there, therefore, it will be convenient for the parties to pursue the case at Lucknow, the same is to be seen in the light of the fact that initially it was the applicant who initiated the proceeding at Gonda by filing the case under Section 13 of the Hindu Marriage Act before the learned Principal Judge, Family Court, Gonda and obtained divorce vide ex-parte judgment and order dated 16.01.2019. Thereafter, the proceeding under Order IX Rule 13 read with Section 151 C.P.C. was instituted by the opposite party No.2 in the year 2019 that was registered as Misc. Case No. 52 of 2019, and since then the contesting parties are regularly participating in the said proceeding and the same is almost ripe up for final disposal. There is no occasion, at least at this stage to transfer the said proceeding from the learned Family Court, Gonda to Lucknow as that may cause unnecessary delay in the disposal of the case and would adversely affect the interest of justice and further, in the light of the observations made by the Hon'ble Apex in the case of **Abdul Nazar Madani versus State of T.N. and Another**; reported in (2000) 6 SCC 204, it is safe to observe that no universal or hard-and-fast rules can be prescribed for deciding the transfer petition which has always to be decided on the basis of the facts of each case. The convenience of the parties does not necessarily mean the convenience of the applicant alone who approached the Court seeking transfer of the pending proceeding on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the parties and of course the best interest of litigation.

(emphasis supplied)

23. It is trite in law that transfer of a case can be made only when the same is reasonably required under the facts and circumstances of the case and only if the allegations made by the applicant seeking transfer of the proceedings are straightway discovered or found to be adversely affecting the interest of justice. Further, a petition seeking transfer of the case should not be based on conjectures and surmises and the onus is on the person who alleges bias to substantiate that the apprehensions are reasonable, genuine and justifiable. There must be cogent evidence available on record to infer the existence of any element of bias.

24. Furthermore, in the instant case, the applicants have come to this Court seeking transfer of the restoration proceeding filed by the second opposite

party herein that emerged pursuant to the *ex-parte* decree passed in the suit for divorce that was filed by the applicant himself at Gonda and the opposite party No.2, although being a lady, has not expressed any inconvenience in pursuing the said proceeding at Gonda rather vehemently opposed the instant Transfer Application. It would not be out of place to note that the Hon'ble Supreme Court in the case of **Sumita Singh versus Kumar Sanjay and another**; reported in **AIR 2002 SC 396**, has held as under:

"3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute."

25. The conduct of the applicant to prefer the Family Court at Gonda for instituting the proceeding and thereafter to make request for transfer of the subsequent proceeding emanating from the same to the Family Court at Lucknow, is reflective of his ulterior motive to cause delay in the proceeding.

26. In view of the facts and the discussion made hereinabove, this Court does not find any good ground to accept the prayer made by the Applicants for transfer of the proceedings of Misc. Case No.52 of 2019 (Smt. Sarla Sharma versus Nagendra Sharma) pending before the learned Family Court at Gonda to any competent Court at District Lucknow.

27. Resultantly, the present Application filed by the applicants under Section 24 of C.P.C. is hereby **dismissed**.

28. No order as to cost.

(Syed Qamar Hasan Rizvi,J.)

December 10, 2025
(Manoj K.)/Abhishek Gupta