

Most Urgent/Out at once

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ): DELHI

No. 330/0-33025 Genl./HCS/2023

Dated, Delhi the _____

26 AUG 2023

Sub: Circulation of copy of Order dated 14.08.2023 passed by Hon'ble Mr. Justice Naveen Chawla in CM(M) No. 1323/2017, titled "Pallavi Sharma Vs. Rajeev Sharma" for information and immediate compliance.

A copy of the letter no. 27576-X/C-1 dated 23.08.2023 bearing this office diary no. 2118 dated 23.08.2023 alongwith copy of order dated 14.08.2023 passed by Hon'ble Mr. Justice Navin Chawla in the abovesaid matter is being circulated for information and immediate compliance to :-

1. Ld. Principal Judge, Family Courts (HQs), Dwarka Court Complex, New Delhi.
2. The Ld. Principal Judge, Family Court, Central District, Tis Hazari Courts, Delhi.
3. The Ld. Judge, Family Court, Central District, Tis Hazari Courts, Delhi.
4. The Ld. Metropolitan Magistrates dealing with the Mahila Courts, Central District, Tis Hazari Courts, Delhi.
5. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.
6. PS to the Ld. Principal District & Sessions Judge (HQs), Tis Hazari Courts, Delhi for information.
7. The Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned official to upload the same on the Website of Delhi District Courts.
8. The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no.DJA/Dir.(Acd)/2019/4306 dated 06.08.2019.
9. Dealing Assistant, R&I Branch for uploading the same on LAYERS.
10. For uploading the same on Centralized Website through LAYERS.



(RAKESH PANDIT)

Officer-in Charge, Genl. Branch, (C)
Addl. District & Sessions Judge,
Tis Hazari Courts, Delhi

Encls. As above.

URGENT / COPY OF ORDER

IN THE HIGH COURT OF DELHI AT NEW DELHI

No. 27576-2 C-1 Dt.: 23-8-23

From
The Registrar General,
High Court of Delhi,
New Delhi.

To

1. The Principal & District Judge (Central), Tis Hazari Court, Delhi,
2. The Principal & District Judge, (West), Tis Hazari Court, Delhi,
3. The Principal & District Judge, (North-West), Tis Hazari Court, Delhi,
4. The Principal & District Judge, (North), Rohini Court, Delhi,
5. The Principal & District Judge, (East) Karkardooma Court, Delhi,
6. The Principal & District Judge, (North-East), Karkardooma Court, Delhi,
7. The Principal & District Judge, (Shahdara), Karkardooma Court, Delhi,
8. The Principal & District Judge, (South), Saket Court, Delhi,
9. The Principal & District Judge, (South-East), Saket Court, Delhi,
10. The Principal & District Judge, (South-West), Dwarka Court, New Delhi,
11. The Principal & District Judge, (New Delhi), Patiala House Court, New Delhi,
12. The Principal & District Judge, Rouse Avenue, New Delhi.

CM(M) No. 1323/2017

PALLAVI SHARMA

... Petitioner/s

Versus

RAJEEV SHARMA

.... Respondent/s

Petition under Article 227 of the Constitution of India against the order dt. 15/09/17 passed by Id. Principal Judge (Central), THC, Delhi in HMA No. 1124/2014.

Sir,

I am directed to forward herewith for information and immediate compliance of a copy of order dated 14/08/2023 passed by the Hon'ble Mr. Justice NAVIN CHAWLA of this Court in the above noted case.

Please acknowledge receipt.

Yours faithfully



Subt 21.8.23.

Administrative Officer (J) C-1
For Registrar General
dvk

- Encls.: 1) Copy of Order dt. 14/08/2023
2) W/S filed o/b of Id. Amicus
3) Responses

Gen. Br.
M

Pr. D. J. (14.8.23)
23/09/23

IN THE HON'BLE HIGH COURT OF DELHI AT
NEW-DELHI
C.M. (MAIN) PETITION NO. 1323 OF 2017

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IN THE MATTER OF:

PALLAVI SHARMA

PETITIONER

VS.

RAJEEV SHARMA

RESPONDENT

PETITION UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA AGAINST THE
IMPUGNED ORDER DATED 15.09.2017 PASSED
BY THE LD. PRINCIPAL JUDGE FAMILY COURTS,
CENTRAL DISTRICT, TIS HAZARI COURTS,
DELHI IN PETITION UNDER SECTION 13(1)(ia)
OF THE HINDU MARRIAGE ACT, 1955 FOR
DECREE OF DIVORCE ON BEHALF OF
RESPONDENT IN HMA CASE NO. 1124 OF 2014

MEMO OF PARTIES

PALLAVI SHARMA
W/o Rajeev Sharma
D/o Mr. Ravi Kumar Sharma
R/o 18/631, IInd Floor,
Joshi Road, Karol Bagh,
New Delhi

PETITIONER

VS.

RAJEEV SHARMA
S/o Shri R.K Sharma
R/o GH-13/813, Paschim Vihar
New Delhi - 110041

RESPONDENT

THROUGH

Jai Bansal

Jai Bansal
ADVOCATE

NEW-DELHI
DATED: 14.11.2017

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CM(M) 1323/2017 & CM APPL. 42307/2017
PALLAVI SHARMA Petitioner

Through: Mr. Jai Bansal, Adv. with
Mr. Tarun Satija, Adv.

versus

RAJEEV SHARMA Respondent
Through: Mr. Sunil Mittal, Sr.
Adv./Amicus Curiae, with
Ms. Seema Seth & Ms. Shreya
Maggu, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
14.08.2023

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1. The learned *Amicus* has handed over a brief summary of the responses received from the learned Family Courts on the various suggestions that were proposed by him and as duly recorded in the order dated 09.07.2018 of this Court.
2. The learned *Amicus* rightly points out that as these suggestions were received in the year 2018, and much water has flown thereafter in the form of judgements of various Courts, including this Court, it would be advisable to request the learned Family Courts and the learned Metropolitan Magistrates dealing with the Mahila Courts to send further suggestions, if any, in this regard, and on the proposed suggestions, as also any further suggestions that they would like to express on the question of whether the proceedings under Section 125 of the Code of Criminal Procedure, 1973, Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956, Section 13 of the Hindu Marriage Act, 1955, Section 25 of the Guardians and Wards Act, 1890, Section 19 of the Protection of Women from Domestic Violence Act, 2005, and such other proceedings, can

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be or should be consolidated, or can be or should be tried by the same Court, and if so, the mode and manner to be adopted by the Courts for ensuring the said purpose.

3. Let a copy of this order, alongwith the written submissions earlier filed by the learned *Amicus* and the brief summary of responses that are now filed, be circulated to all the Principal Judges of the learned Family Courts, who shall, in turn, circulate the same to the Judges of the Family Courts, and to the Metropolitan Magistrates handling the Mahila Courts, to gain and accumulate their responses. Let the responses by the learned Family Courts and the learned Metropolitan Magistrates dealing with the Mahila Courts be filed within a period of six weeks.
4. The learned Registrar General of this Court shall collate the responses so received, and shall supply a copy thereof to the learned *Amicus* and also to the learned counsel for the petitioner, who shall, thereafter, give their further suggestions. The learned *Amicus* is also requested to make further suggestions after examining the responses so received.
5. List for consideration on 11th October, 2023 at 02:30 pm.

AUGUST 14, 2023
al/AS


NAVIN CHAWLA, J

TRUE COPY

NC

[Click here to check corrigendum.](#) **EXAMINER**

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IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRA ORDINARY CIVIL WRIT JURISDICTION)
C.M. MAIN PETITION No. 1323 OF 2017

IN THE MATTER OF :

PALLAVI SHARMA

...Petitioner

VERSUS

RAJEEV SHARMA

...Respondent

**WRITTEN SUBMISSIONS ON BEHALF OF THE LD. AMICUS
CURIAE**

MOST RESPECTFULLY SHOWETH,

The question for before this Hon'ble Court is whether the petition for dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955; a petition for maintenance under Section 125 of the Code of Criminal Procedure, 1973 and a Guardianship Petition under Section 7 and 25 of the Guardians and Wards Act, 1890 can be consolidated for trial.

1. At the outset, the attention of this Hon'ble Court is invited to Section 13(2)(iii) of the Hindu Marriage Act, 1955 which is as follows :-

“(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground-

(i) xxxxx.....

(ii) xxxxx.....

(iii.) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956) or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) [or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)], a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or”

Therefore, it is submitted that if a petition for maintenance under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 or under Section 125 of the Code of Criminal Procedure, 1973 is consolidated with say a divorce petition under Section 13 of the Hindu Marriage Act, 1956, it is likely to adversely affect the right of the wife to seek divorce under the aforesaid provision.

2. Section 21A. Power to transfer petitions in certain cases-

(1) Where

(a) A petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13; and

(b) Another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State, the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub section (1) applies-

(a) If the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;

(b) If the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908, to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

Thus, Section 21A of the Hindu Marriage Act, 1955 provides that a petition for dissolution of marriage under Section 13 of the Act and a

petition for judicial separation under Section 10 of the Act can be consolidated and tried jointly. A decree under Section 10 for judicial separation is available on the grounds specified in Section 13 of the Hindu Marriage Act, 1955.

3. In the following cases, various Courts have consolidated cases under Section 10/ Section 13 and Section 9 of the Hindu Marriage Act, 1955 :-

Guda Vijayalakshmi Vs Guda Ramachandra Sekhara Sastry AIR 1981 SC 1143, the Hon'ble Supreme Court of India while transferring and consolidating the wife's petition filed for judicial separation and the husband's petition for restitution of conjugal rights held that :

"Where a wife filed petition for judicial separation under Section 10 of the Hindu Marriage Act and by the husband for restitution of conjugal rights under Section 9 in courts in two different States it will invariably be expedient to have a joint or consolidated hearing or trial of both the petitions by one and the same court in order to avoid conflicting decisions being rendered by two different Courts. In such a situation resort will have to be had to the powers under sections 23 to 25 of the C.P.C. for directing transfer of the petitions for a consolidated hearing."

"It cannot be said that the substantive provision contained in Section 25, CPC is excluded by reason of Section 21 of the Hindu Marriage Act, 1955. In terms Section 21 does not make any distinction between procedural and substantive provisions of CPC and all that it provides is that the Code as far as may be shall apply to all proceedings under the Act and the phrase "as far as may be" means and is intended to exclude only such provisions of the Code as are or may be inconsistent with any of the provisions of the Act. It is impossible to say that such provisions of the Code as partake of the character of substantive law are excluded by implication as no such implication can be read into Section 21 and a particular provision of the Code irrespective of whether it is procedural or substantive will not apply only if it is inconsistent with any provisions of the Act."

"So far as Section 21A of the Hindu Marriage Act, is concerned the marginal note of that section

itself makes it clear that it deals with power to transfer petitions and direct joint or consolidated trial "in certain cases" and is not exhaustive."

Further, in **Ajay Lawania Vs Shobhna Dubey (2010) 15 SCC 354**, the Hon'ble Supreme Court of India held that :

"It is well settled that if two petitions are filed under the Hindu Marriage Act, one under Section 9 and the other under Section 13, then, in order to avoid conflicting decisions, it is expedient that both the cases are heard by the same court. Evidence in the two cases should be recorded one after the other, arguments should be heard separately and thereafter, separate judgments should be delivered on one day."

In **Sanjeev Indravadan Dani Vs Mrs. Rupal Sanjeev Dani, LPA No. 203 OF 2009** the Hon'ble Bombay High Court while ordering for a consolidated trial of the Section 9 petition for restitution of conjugal rights filed by the wife and the petition for divorce on the ground of cruelty and desertion under Section 13 of the Hindu Marriage Act, 1955 opined that :

"Indeed there is no express provision either in the Hindu Marriage Act or for that matter in the Family Courts Act or the Code of Civil Procedure, which authorizes the Court to consolidate the trial of two separate petitions pending before it. Nevertheless, such power can be exercised by the Court by invoking its inherent powers, when it is necessary for the ends of justice or to prevent abuse of the process of the Court."

" For, the provision of Section 21A of the Hindu Marriage Act is neither an express bar nor can be considered as an implied prohibition for exercise of inherent power to order consolidation of trial of two separate petitions by the Family Court. Moreover, the fact that Section 21A only refers to petition for judicial separation under section 10 or for decree of divorce under section 13, that does not mean that inherent powers of the Family Court under Section 151 is impacted in any manner. That power inheres in the Family Court."

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In **Prakash Vs Smt. Kavita AIR 2008 Raj. 111**, the Hon'ble High Court of Rajasthan held that :

"Before proceeding to decide the appeal, we may observe that whenever cross petitions are filed in the family courts then those petitions should be consolidated as early as possible and both the petitions should be treated and should be heard together. In the Hindu Marriage Act, Section 21A provides for deciding two petitions, if filed by one party under Section 13 for divorce and filed by another party under Section 10 for judicial separation or vice versa then both the petitions are required to be tried and required to be heard together. The same principle is required to be followed when one party to marriage files petition under Section 13 and another files petition under Section 9 of the Hindu Marriage Act because of the simple reason that the two matters cannot be decided separately. Reason for it is that if the Court will proceed to decide two matters separately then the Court is bound to decide the two matters separately and on the basis of evidence available on record of each case and cannot consider the evidence recorded in one case in another case. In that situation, if one party successfully proves his/her case in one petition and failed to adduce evidence in another case then there will be two contradictory decrees. When there are cross petitions, one under Section 9 and another under Section 13, then either of the petition can be allowed and not both the petitions. The two petitions, one under Section 13 and another under Section 9 of the Hindu Marriage Act in fact are inseparable and, therefore, cannot be decided separately."

4. Power of court to Consolidate Proceedings/ Suits under the Code of Civil Procedure, 1908.

In **M/s Chitivalasa Jute Mills Vs M/s Jaypee Rewa Cement JT 2004 (2) SC 535**, the Hon'ble Supreme Court of India held that :

"The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent powers of the court flowing from section 151 of the CPC. Unless

specifically prohibited, the civil court has inherent power to make such order as may be necessary for the ends of justice or to prevent abuse of process of the court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials. The evidence having been recorded, common arguments need be addressed followed by one common judgment. However, as the suits are two, the court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits."

In State Bank of India Vs Ranjan Chemicals Ltd. and Another (2007) 1 SCC 97, the Hon'ble Supreme Court of India held that a joint trial can be ordered in the following circumstances :

- (i) If common question of law or fact arises in both proceedings or right to relief claimed in them is in respect of or arises out of the same transaction or series of transactions.
- (ii) Where Plaintiff in one action is the same person as Defendant in another action and if one action can be ordered to stand as a counterclaim in the consolidated action.
- (iii) When the court finds that ordering of such trial would avoid separate overlapping evidence being taken in the two causes put in suit and it would be more convenient to try them together in the interests of parties and for effective trial of the causes.

It is not necessary that all questions or issues that arise should be common to both actions. If some issues and some evidence are common, held that would be sufficient for a joint trial, especially when the two actions arise out of the same transaction or series of transactions. Furthermore, power to order joint trial cannot be curtailed by introducing restriction to the effect that such order can be passed only if there is consent by both sides.

In Prem Lata Nahata Vs Chandi Prasad Sikaria (2007) 2 SCC 551, the Hon'ble Supreme Court of India held that :

... "It cannot be disputed that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common question of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits. (Halsbury's Laws of England, Vol. 37, para 69). If there is power in the court to consolidate different suits on the basis that it should be desirable to make an order consolidating them or on the basis that some common questions of law or fact arise for decision in them, it cannot certainly be postulated that the trying of a suit defective for misjoinder or parties or causes of action is something that is barred by law."

In Ram Prakash Agarwal & Anr. Vs Gopi Krishan (Dead through L.R.'s) and Ors. 2013 (11) SCC 296, the Hon'ble Supreme Court of India held that :

"The consolidation of suits has not been provided for under any of the provisions of the Code, unless there is a State amendment in this regard. The same can be done in exercise of the powers under Section 151 of the Code of Civil Procedure, 1908, where a common question of fact and law arise therein, and the same must also not be a case of misjoinder of parties. The non consolidation of two or more suits is likely to lead to multiplicity of suits

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being filed, leaving the door open for conflicting decisions on the same issue, which may be common to the two or more suits that are sought to be consolidated. Non- consolidation may, therefore, prejudice a party, or result in the failure of justice. Inherent powers may be exercised in those cases, where there is no express provision in the Code. The said powers cannot be exercised in contravention of, or in conflict with or upon ignoring express and specific provisions of the law."


SUNIL MITTAL
Senior Advocate
(Ld.Amicus Curiae)

DELHI
DATED : 23.05.2018

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IN THE HIGH COURT OF DELHI AT NEW DELHI.

C.M(MAIN) 1323/2017

In the matter of :

PALLAVI SHARMA

...PETITIONER

Versus


RAJEEV SHARMA

...RESPONDENT

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DELHI
DATED : 12.08.2023


SUNIL MITTAL
Senior Advocate

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IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M. (MAIN) 1323/2017

IN THE MATTER OF :

PALLAVI SHARMA

...Petitioner

VERSUS

RAJEEV SHARMA

...Respondent

BRIEF SUMMARY OF THE RESPONSES FILED BY THE LD.
FAMILY COURTS ON THE VARIOUS SUGGESTIONS
PROPOSED BY THE AMICUS CURIAE.

SUGGESTION 1 :

Petition under Section 10, 13 and 9 of the Hindu Marriage Act, 1955 can be consolidated for joint trial.

RESPONSES :

It would be appropriate to consolidate petitions under Section 9, 10 and 13 of the Hindu Marriage Act, 1955 for the purpose of joint trial to save the time and for avoiding duplicity of the evidence. This is the mandate of Section 21 of Hindu Marriage Act, 1955 as well.

However, it should be clarified that if the proceedings of a case under Section 13/10 have reached an advanced stage of trial, and thereafter a petition under Section 9 of the Act is moved by the respondent or vice versa, the proceedings may not be consolidated, lest it will only delay the disposal of the petition under Section 13/10.

Shri M.C. Gupta, Ld. Judge, Family Courts, North West District, Rohini District Court submits that Section 9, 10 and 13 of the Hindu Marriage Act, 1955 cannot be consolidated, reason being the prayers are mutually destructive of each other.

SUGGESTION 2, 3 & 4 :

S2 : Petitions under Section 18 and 20 of the Hindu Adoption & Maintenance Act and complaint under Section 125 of the Code of Criminal Procedure, 1973 can be consolidated for the purpose of interim relief as well as for trial and adjudication by a common order.

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S3 : Where a party has, in the first instance, claimed relief under Section 18 and 20 of the Hindu Adoption & Maintenance Act, subsequent complaint under Section 125 Cr.P.C. is liable to be discouraged and consolidated with the former for disposal by a common order and to avoid multiplicity of proceedings.

S4 : In cases where complaint under Section 125 Cr.P.C. is initiated in the first instance and subsequently a case under Section 18 and 20 of the Hindu Adoption & Maintenance Act is filed, complaint under Section 125 Cr.P.C. is maintainable and proceedings under Section 125 Cr. P.C. can be consolidated with proceedings under Section 18 and 20 of the Hindu Adoption and Maintenance Act.

RESPONSES :

Generally, it has been observed that the parties unto have already filed the complaint under Section 125 Cr. P.C. seeking maintenance does not file a separate petition under Section 18 and 20 of the Hindu Adoption & Maintenance Act, 1956. In case both are filed simultaneously, the same should be consolidated together for joint trial to save time and avoiding contradictory orders. Where a party, in the first instance claims relief under Section 18 and 20 of the Hindu Adoption & Maintenance Act, subsequent plaint under Section 125 Cr. P.C. is liable to be discouraged and/or consolidation with the former for disposal by a common order and to avoid multiplicity of proceedings.

It has been submitted by some of the Family Courts that petitions under Section 18 and 20 of the Hindu Adoption & Maintenance Act, 1956 can be taken up together with the complaint filed under Section 125 Cr. P.C. till the disposal of interim maintenance. But both these petitions should not be clubbed together for the purpose of trial because proceedings under Section 125 Cr. P.C. are summary in nature whereas petition under Section 18 and 20 of Hindu Adoption & Maintenance Act, 1956 are comprehensive like a civil suit. Thus consolidation of trial of these two proceedings would delay the disposal of complaint under Section 125 Cr. P.C., 1973.

Furthermore, it has been submitted by Ms. Reena Singh Nag, Ld. Principal Judge, Family Court, Shahdara, Kardardooma District Court, Delhi that judgment in civil and criminal cases may be passed separately so that there is no technical hurdle in execution thereof.

SUGGESTION 5 :

If proceedings under Section 13 of the Hindu Marriage Act, 1955, Section 18 & 20 of Hindu Adoption & Maintenance Act, 1956, Section 125 Cr. P.C., 1973 and complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 are initiated, Ld. Metropolitan Magistrate should direct the aggrieved person to raise her grievance in the complaint under PoWDV Act to a civil court by invoking Section 26 of the PoWDV Act to curb multiplicity of proceedings.

RESPONSES :

It has been suggested by Shri Narottam Kaushal, Ld. Principal Judge, South District, Family Court, Saket, New Delhi that encouraging invocation of Section 26 of PoWDV Act would amount to practically transfer of all PoWDV cases to family courts, which are already overburdened with a pendency of about 1500 to 2500 per court.

Furthermore, it has been submitted that, the aggrieved party would end up loosing one forum of appeal. The appeal against an order passed by Family Court, would lie before a Division Bench of the Hon'ble High Court, whereas appeal against an order passed by Ld. Metropolitan Magistrate in PoWDV Act proceedings lies before Additional Session Judge.

It is further suggested that Mahila Courts be closely associated with the family courts by way of an institutional arrangement, since the same set of parties are seeking similar reliefs in parallel forums i.e. Mahila Courts and Family Courts. The excess work which is piled up in Family Court can be decentralized and distributed to Mahila Courts.

Shri Vinay Kumar Khanna, Ld. Judge, Family Court, North East District has suggested that proceedings under the PoWDV Act should not be consolidated with other matters pending in the Family Courts, by invoking Section 26 of the PoWDV Act. In few cases protection order, residence order or other orders of urgent nature are required to be passed or enforced urgently, in that scenario, the concerned Elaqa Magistrate is ina better position to provide relief with the assistance of the concerned SHO instead of directing the aggrieved person to approach the Civil Court.

Shri Ashwani Kumar Sarpal, Ld. Judge, Family Court, Shahdara, Karkardooma District Court has suggested that all the cases pending within the territory of Delhi should be transferred to any particular court

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and thereafter should be jointly tried and decided after consolidation so that all issues and dispute between the parties are settled once for all. Preferably, all the cases should be transferred to that particular court where first case of any nature is instituted between the parties.

When the cases between the parties are transferred to one court, then all subsequent new cases should be only instituted in that particular court even if party has direction to file the same at any other place.

After implementation of such scheme of consolidation of the cases and transfer to one court, a variance of the situation can be done after about 3 to 6 months to find out whether there is almost equal distribution or not. In that situation, transfer of cases to another court in same court complex or creation of additional courts can be done.

Majority of the family courts are of the view that if a party has already filed petition under Section 125 Cr. P.C., he/she should not be allowed to pursue interim application for maintenance under Section 23 of Domestic Violence Act or under Section 24/26 of the Hindu Marriage Act and the order of interim maintenance passed in any of the proceedings should be adopted for the purpose of subsequent applications for interim maintenance.

SUGGESTION 6 :

In proceedings under Guardians & Wards Act, 1890, the court has to see the interest and welfare of the minor child or children. Similar is the consideration for the court in proceedings under Section 26 of the Hindu Marriage Act. Proceedings under Section 25 of Guardian and Wards Act and under Section 13 of the Hindu Marriage Act can be consolidated for the purpose of joint trial.

RESPONSES :

Shri B.R. Kedia, Ld. Principal Judge, Family Court, South-West District, Dwarka, New Delhi submits that the scope and ambit of provisions under Section 26 of the Hindu Marriage Act, 1955 and Section 25 of Guardians and Wards Act, 1890 are different. An application seeking interim visitation/custody of the child can be disposed off on the basis of the pleadings of the parties and does not require full trial and therefore the said petition cannot be clubbed with a petition under Guardians & Wards Act, 1890.

Shri Sanjay Garg, Ld. Principal Judge, Family Court, South-East District, Saket District Court, New Delhi suggests that proceedings under Section 25 of the Guardians & Wards Act, 1890 & Section 13 of the Hindu Marriage Act, 1955 are based on different facts & consolidation for the purpose of joint trial is not proper.

Shri M.C. Garg, Ld. Judge, Family Court, North-West District, Rohini District Court, submits that if the petitioner is same then the petition under Section 13 of the Hindu Marriage Act, 1955 provided an application under Section 26 of the Hindu Marriage Act, 1955 has also been moved by the petitioner and the petition under Section 25 of the Guardian & Wards Act, 1890 can be consolidated as the grounds for relief are same.

SUGGESTION 7 :

Proceedings under Section 125 Cr. P.C., 1973 and Section 18 & 20 of the Hindu Adoption & Maintenance Act, 1956 cannot be consolidated in proceedings under Section 13 of the Hindu Marriage Act, 1955 so it would prejudice the right of the wife who has a separate right to claim dissolution of marriage under Section 13(2)(iii) of the Hindu Marriage Act., 1955 .

RESPONSES :

Shri Sanjay Garg, Ld. Principal Judge, South-East District, Family Court, Saket, concerns with the above suggestion as it would prejudice the rights of the wife.

Additionally, Shri Sanjay Kumar, Ld. Principal Judge, North-West District, Family Court, Rohini Court suggests that Section 125 Cr. P.C. and a petition/application under Section 25 Hindu Marriage Act, 1955 for permanent alimony should be consolidated.

Same is suggested by Shri R.P. Pandey, Ld. Principal Judge, North District.

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Judgements on the point of consolidation and overlapping jurisdictions after the suggestions received from the Id. Family Courts :

1. That the Hon'ble Supreme Court of India, in judgement 'Rajnesh vs Neha' Crl. Appeal No. 730 of 2020 (Arising out of SLP (Crl.) No. 9503 of 2018) has dealt with the issue of 'Overlapping Jurisdictions' in Part I of the judgement. The Hon'ble Court directed *"To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding"*.
2. That in the case of 'Vijay Suryakant Kakade and Others vs Anushka Vijay Kakade and Others' 2023 SCC Online Bom 274, the Hon'ble High Court of Bombay has dealt with the question of transfer of proceedings filed by the wife under provisions of the Protection of Women from Domestic Violence Act (DV Act) from the Court of Judicial Magistrate First Class to the Family Court where the applicant/husband filed a petition for divorce. The Hon'ble Court, in para 18 of the judgement observed that *"In so far as the reason (i) that 'such transfer would take away the statutory right of appeal available to wife' is concerned, the Division Bench of this Court in Sandip Mrinmoy Chakrabarty (supra) has approved the judgment of the learned Single Judge of this Court in Santosh Sanjeev Mulik (supra). The learned Single Judge of this Court in Santosh Sanjeev Mulik's case held that transfer of DV proceedings to the Family*

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Court would not take away the wife's right of appeal, but what is lost is a further right of revision, and such reason is no ground to deny transfer of proceedings. The Division Bench, in paragraph 45, repelled submission on behalf of the husband that the order passed by the Family Court after transfer of proceedings under the DV Act would be composite and, therefore, an appeal under section 19 of the Family Courts Act, 1984 would not be maintainable. It is held that the moment both proceedings are clubbed by judicial order of this Court, the jurisdiction of the Family Court becomes abundantly clear over the proceedings under DV Act, and it would be a fallacy and myopic to term part of the order pertaining to the reliefs under DV Act as an order amenable to the writ jurisdiction. The Division Bench, therefore, concluded that the Family Court Appeal challenging the common order arising out of provisions of the DV Act and Family Court Act would be maintainable."

3. That in the matter of 'P. Ganesan vs M. Revathy Prema Rubarani' 2022 SCC Online Mad 3598 : AIR 2022 (NOC 780) 365 , the Hon'ble High Court of Madras, amongst others, considered with the question "*Whether the proceedings initiated under Domestic Violence Act and pending before the Magistrate Court can be transferred to Civil Court or Family Court, by invoking Article 227 of Constitution of India ?*". The Id. Court has answered the said question as "*Proceedings under Domestic Violence Act cannot be transferred from a Magistrate to a Civil or Family Court at the instance of the Respondent defined under 2 (q) of the Domestic Violence Act. However, proceedings can be transferred at the instance of the applicants/victim or with her consent*".
4. That in the case of 'Ammini K.A vs Rayi N.A' TRP (Civil) 399 of 2021 before the Hon'ble High Court of Kerala, the Petitioner sought transfer of proceedings under the Protection of Women from Domestic Violence Act pending before the Magistrate to the Family

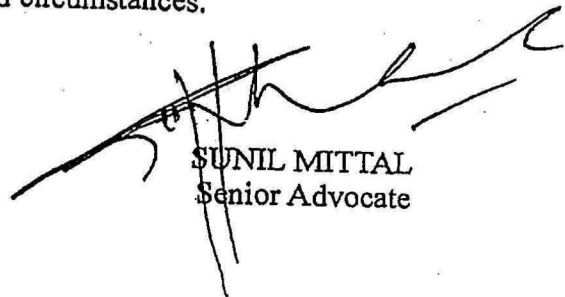
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Court to be taken up with a petition for divorce. The relief was declined by the Hon'ble Court for the reason "No doubt, the protective and prohibitory reliefs under the DV Act can be sought in a civil proceeding, but that does not mean that a complaint under Section 12 can either be filed or transferred to the Civil Court or The Family Court. The jurisdiction to decide the complaint is vested with the Magistrate Court alone."

That in the light of above, this Hon'ble Court may consider consolidation of cases pending in different courts claiming similar reliefs on the basis of same facts and circumstances.

DELHI
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