


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Reference No. 1/2026

Hema W/o Mohit Bhardwaj D/o Pandit Ravishankar Bhardwaj,
R/o Sujan Ganga Nahar Ke Kinare Gopalgarh Mohalla, Bharatpur
(Raj.)

-----Petitioner

Versus

Mohit Bhardwaj S/o Mani Mohan Sharma, Aged About 42 Years,
R/o 10 Jayanti Nagar Bharatpur (Raj.)

-----Respondent

For Petitioner(s)	:	Mr. Jitendra Mitruka, Mr. Avi Airun, Mr. Hemant Taylor, Mr. Abhishek B. Sharma, Mr. T.C. Swami
For Respondent(s)	:	Mr. Chhatrasal Singh Tanwar, Mr. Abhilash Sharma

HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

24/02/2026

REPORTABLE

1. Instant Civil Reference under Section 113 of the Code of Civil Procedure (for short "CPC") came to be registered before High Court, in the backdrop of facts when the Judge, Family Court No. 1, Bharatpur vide order dated 06.12.2025, transferred four misc. matrimonial cases pending before him to the Family Court No. 2, Bharatpur and thereby exercised power of transfer vested in the High Court or the District Court, taking resort of general view expounded by learned Single Judge of Rajasthan High Court while deciding S.B. Civil Transfer Application No.143/2016 titled *Shantanu Agarwal vs. Anubha Jain*, vide its final order dated

24.04.2017. Then the Judge, Family Court No.2, Bharatpur, vide order dated 18.12.2025 opined that general view expressed by learned Single Judge in the order dated 24.04.2017, appears to be in conflict of Section 24 CPC, and give rise to a contradictory situation, allowing Family Court to exercise power of transfer of cases, hence, the Judge of Family Court No.2, Bharatpur, asked for the guidance/ opinion of the High Court in this regard. Thus, in furtherance to the order dated 18.12.2025 passed by the Judge, Family Court No.2, Bharatpur, instant Civil Reference has come up before this Court under the administrative direction of Hon'ble Acting Chief Justice.

2. Learned Single Judge of this High Court, while deciding a Civil Transfer Application No. 143/2016 in exercise of power under Section 24 CPC, transferred a matrimonial case from Family Court No.1, Jaipur to Family Court No.2, Jaipur vide order dated 24.04.2017 and expressed his following general view in Paras No.4, 6 & 9:-

"4. In my view, the Family Court itself could have taken up initiative to consolidate all the cases pending before the Family Court No.1, Jaipur or Family Court No.2, Jaipur. However, for the reasons best known, no suo-motu action has been initiated by the Family Courts to consolidate and to be heard by one Family Court.

6. In my view, the Family Courts suo-motu can also consider all such applications/petitions moved by the respective parties and this Court should not be burdened with such applications/petitions, which is procedural in nature and can be taken care of by the Family Court where different applications/petitions are pending before different Family Courts at the same place where number of Family Courts are more.

9.Let copy of this order be forwarded to Family Court No.3 as well, just to bring to its notice that, if similar

applications between the parties come up before various Family Courts in the same City/place suo-motu or on an application by the parties the cases can be inter se transferred without burdening this Court and to avoid precious time of everyone so also expenses to be incurred by parties. In my view, it will be appropriate to circulate copy of this order to Family courts in places where more than one Family Court is functioning and let Registry may circulate the same."

(underline supplied)

3. It appears that the Judge, Family Court No.1, Bharatpur, relied upon the view expressed by the learned Single Judge in the judicial order dated 24.04.2017, assumed that the power and jurisdiction to transfer the matrimonial cases from one Family Court to another Family Court within the same City/District vests in the Family Court also and thereby Family Court No.1, Bharatpur, passed a transfer order dated 06.12.2025 on moving of transfer application by one party, and transferred four cases from Family Court No.1 to Family Court No.2 in District Bharatpur, exercising power of transfer under Section 24 CPC, whereas indeed, as per the Section 24 CPC, general power of transfer vest and rest in the High Court or the District Court only, not in the Family Court.

4. When the instant Reference Petition came up before this Court on 06.02.2026, this Court framed following questions, to be answered in this reference and invited learned Members of the Bar to assist the Court:-

"i) Whether general power of transfer conferred to the High Court or the District Judge, by virtue of Section 24 of Code of Civil Procedure, can be exercised by the Family Court to transfer pending cases from one Family Court to another, within same District?

ii) If answer of question No.1 is not affirmative, whether Single Judge of High Court by way of a judicial order, can vest power to the Family Court, to transfer the cases from one Family Court to another within same District?

iii) Whether the order dated 24.04.2017, passed by learned Single Judge of High Court in S.B. Transfer Application No.143/2016, vesting the power of transfer with Family Court, expounds a binding judicial precedent or merely is in form of an opinion of a Judge and what is the true purport of the order dated 24.04.2017?"

5. Learned Members of Bar, in two set of groups, extended their precious assistance to the Court and referred various statutory provisions of the Family Courts Act, 1984, Code of Civil Procedure, Section 21A of the Hindu Marriage Act, Section 3(17) and (25) of the General Clauses Act, 1897 so also the Rajasthan (High Court) Family Court Rules, 1990 and the Family Courts (Rajasthan) Rules, 1991.

6. One set of Advocates have argued that the Family Court can exercise the jurisdiction of transfer as well, which vests in the District Court under Section 24 CPC while dealing with the suits and proceedings of which exclusive jurisdiction to hear and decide, vests in the Family Court only, referred to in the explanation appended to Section 7(1)(a) of the Family Courts Act because the jurisdiction of District Court in respect of such suits and proceedings, is exclusively barred by virtue of Section 8 of the Act, hence, in such scenario, the Family Court, must have been held to have the power and jurisdiction of transfer the cases as well, in the same manner, which can be exercised by the District Court as per Section 24 of the CPC, at least from one Family Court to another Family Court within the same City/District wherever more than one Family Courts in a District have been established by the State Government in the State of Rajasthan. It has been argued that with this analogy the view expressed by learned Single Judge in

the order dated 24.04.2017 in Para Nos. 4, 6 & 9 referred hereinabove, appears to be justified and may not be construed to be in conflict with the provision of Section 24 CPC.

7. Another set of Advocates, in contrast to the above argument and against the view of learned Single Judge, have pointed out that it is true that more than one Family Court(s) can be established by the State Government in any District of State considering the population of that District and to deal with that situation, Section 4 of Family Courts Act, takes care of for appointment of Judges in the Family Courts. Section 4 of the Act, indeed, deals with appointment of Judge(s) of a Family Court. As per Section 4(2)(b), the State Government may, with the concurrence of the High Court, appoint any of the Judge(s) to be the Principal Judge and any other Judge to be the Additional Principal Judge. Thus, there can be a Principal Judge and Additional Principal Judge in the Family Courts. As per Section 4(2)(c) and (d), the Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof and as per Section 4(2)(d), the Additional Principal Judge may exercise the powers of the Principal Judge, in the event, office of Principal Judge is lying vacant or when the Principal Judge is unable to discharge his functions for one or other reason.

8. It has further been pointed out that the State Government in consultation with the High Court of Judicature for Rajasthan has framed the Family Courts (Rajasthan) Rules, 1991, in exercise of powers conferred by Section 23 read with Section 4(6), 5 and 6 of the Family Courts Act, 1984. The Rules of 1991, governs the

procedure of recruitment of Judges, their salary, allowances and other terms and conditions. But, these Rules nowhere suggest any distinguished criteria/standard for appointment of a Judge of Family Court as Principal Judge and other as Additional Principal Judge in the same District.

In addition, Rule 6 of the Rajasthan (High Court) Family Courts Rules, 1990 has also been brought to the notice of Court, which envisage that "the administrative control over the Family Court shall vest in the High Court". The High Court means "the High Court of Judicature for Rajasthan".

9. It has further been pointed out that in the State of Rajasthan, wherever, more than one Family Court(s) have been established in any District like Jaipur, Ajmer, Kota, Bikaner, Udaipur, Jodhpur etc. all Judges, appointed in the Family Courts are of same rank. Neither any particular Judge has been appointed as a Principal Judge nor others have been appointed as Additional Principal Judge in terms of Section 4(2)(b) of the Family Courts Act, 1984. The Rules of 1991 are also silent on this aspect. The administrative and disciplinary control of every Family Court Judge vests in the High Court and work distribution/transfer of cases from one Family Court to another Family Court within the same District or from one District to another District too is done by the High Court only either by way of passing administrative orders or judicial orders, as the case may be. Thus, their argument is that the Family Court cannot exercise power of transfer the cases alike the District Court, despite exercising equivalent jurisdiction under Section 7 of Family Court and only the High Court can exercise power of transfer of cases from one Family Court to another by

virtue of Section 24 CPC, hence, the view expressed by learned Single Judge in Para Nos.4, 6 & 9 of order dated 24.04.2017 (supra) does not/ cannot have any implication in the State of Rajasthan nor can hold the field.

10. Our attention has also been drawn to Section 2(4) of CPC, which defines the District Court and reads as under:-

"district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court;"

11. It would also not be out of place to reproduce Section 22, 23 and 24 of CPC, which deal with the situation of transfer and make it clear that by which Court, power of transfer should be exercised:-

22. Power to transfer suits which may be instituted in more than one Court.—Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

23. To what Court application lies.—(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

24. General power of transfer and withdrawal.—(1)

On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

*(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
 (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—*

- (i) try or dispose of the same; or*
- (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or*
- (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.*

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section,—

- (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;*
- (b) "proceeding" includes a proceeding for the execution of a decree or order.]*

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]"

12. Reference of the definition prescribed in the General Clauses Act, 1897, has also been made that Section 3(17) defines "District Judge" in the manner that, "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not

include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

Section 3(25) stipulates that, "High Court", used with reference to civil proceedings, shall mean the highest Civil Court of appeal (not including the Supreme Court) in the part of India in which the Act or Regulation containing the expression operates;".

13. Attention of Court has also been invited that under the Hindu Marriage Act, 1955, Section 21A also prescribes a provision, "power to transfer petitions in certain cases", which reads as under:-

"[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 (5 of 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."

14. We have pondered over the rival submissions advanced by the two groups of Advocates, perused the view expounded by learned Single Judge in Para Nos.4, 6 & 9 of the order dated 24.04.2017 (supra) and gone through the various statutory provisions and the relevant rules referred hereinabove.

15. The Family Courts Act, 1984 was promulgated w.e.f. 14.09.1984 and Family Court(s) came to be established as per Section 3 of the Act. Section 7 of the Act deals with the jurisdiction of the Family Court and for ready reference, relevant portion of Section 7 is quoted below:-

"7. Jurisdiction.— (1) *Subject to the other provisions of this Act, a Family Court shall—*

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.

(2) *Subject to the other provisions of this Act, a Family Court shall also have and exercise—*

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

16. A bare perusal of Section 7 of the Family Courts Act makes it clear that in connection with the suits and proceedings referred to in the explanation to sub Section 1(a) of Section 7 of the Act, a Family Court exercises jurisdiction, exercisable by any District Court or any subordinate Civil Court. When the Family Court exercises such jurisdiction, as per Section 7(1)(b), the Family Court is deemed to be a District Court or subordinate Civil Court, as the case may be. Similarly, as per Section 7(2)(a) in respect of the matters relating to Chapter IX of Cr.P.C. (Now Chapter X of BNSS, 2023) relating to order for maintenance of wife, children and parents, Family Court exercises jurisdiction, exercisable by a Magistrate of First Class under Cr.P.C.

17. It is noteworthy that Section 7 of the Family Courts Act does not envisage that Family Court possesses or may exercise any power and jurisdiction to transfer the matrimonial matters, from one Family Court to another Family Court even within the same City/District. Thus, Section 7 of the Act, does not support the view expressed by learned Single Judge in Para Nos.4, 6 & 9 of order dated 24.04.2017 (supra).

18. Coming to Section 24 CPC, a bare perusal makes it explicitly clear that the power of transfer under Section 24 CPC is vested in the High Court or in the District Court which can be exercised only in respect of proceedings pending in a subordinate Court. Section 24(3)(a) specifically stipulates that for the purpose of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court. Thus, what transpires is that, although, for the purpose of exercising judicial power, the Additional District Judge is equivalent and/or equated to a District

Judge, but the general administrative power and judicial power of transfer cases can be exercised by District Judge only over and above to the Courts of Additional District Judges as well.

19. We are of the view that the judicial power of transfer envisaged to the High Court or to the District Court, by virtue of Section 24 CPC, which is exerciseable in respect of the suits or proceedings pending before a Court subordinate to it, is a distinct, exclusive and independent power, which even may not be delegated nor can be assumed to be vested in the Family Court. Power and jurisdiction of the Family Courts are governed by their own special statutes i.e. Family Courts Act, 1984, or other relevant Family Law Acts and Statutes and unless specifically empowered, they do not have jurisdiction to transfer cases under Section 24 CPC. It is true that Section 10 of Family Courts Act, prescribes that subject to the other provisions of this Act and the rules, the provision of the Code of Civil Procedure and of any other law for the time being in force shall apply to the suits and proceedings before a Family Court (other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973) and for the purpose of this said provision of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court, yet Section 7 of the Family Courts Act, which deals with the jurisdiction of the Family Court shall override and prevail over the general power of transfer envisaged under Section 24 CPC. Specific provision of special statute, prevails over the general provision of a common statute. If it is held that Family Court may exercise power of transfer the cases, being equivalent to the District Judge, same would tantamount to legislate the law under

Section 7 of the Family Courts Act, which is not the domain and function of judicial Courts. The Family Court while exercising judicial power and jurisdiction, cannot travel beyond the jurisdiction entrusted by virtue of Section 7 of Family Courts Act.

20. It can be observed here that there is certainly a distinction between the judicial orders of transfer the cases from one Court to another and the administrative orders, allocating business of work to the Courts of particular Judges. Even if we consider the provision of Section 4(2)(b) of the Family Courts Act, which postulates provision for appointment of Principal Judge and Additional Principal Judge of Family Courts in the District, still same may not be construed to empower the Principal Judge for exercising power of transfer from one Additional Principal Judge to another within his District, although, in that situation, if the appointment of Principal Judge is made in the Family Court, then only at the most, administrative power of allocating the business of work, may be assigned to the Principal Judge by the High Court, which at present are being exercised by the High Court.

21. Coming to the issue that which Court can exercise the judicial power to transfer the cases from one Family Court to another either the Principal District Court or the High Court, it can be done only by the High Court. The reason is, the Family Court, established in a District under Section 3 of the Family Courts Act and which exercises its jurisdiction to decide and settle the suits and proceedings referred to in explanation to Section 7(1)(a) of the Family Courts Act, certainly cannot be considered to be a subordinate Court to the Principal District Judge of that District, hence, it is only the High Court, which can exercise power and

jurisdiction under Sections 22, 23 & 24 CPC to transfer a case from one Family Court to another either in same City/District or to any other District within the State.

22. In our considered opinion, the power and jurisdiction of transfer of cases from one Family Court to another Family Court either within the same District or within two Districts within the same State, can be exercised by the High Court only. Power of transfer the petition, as referred under Section 21A of the Hindu Marriage Act can also be exercised only by the Court which is empowered to transfer the case under Section 24 CPC, but not by the Family Court. To subscribe our opinion, we may refer a judgment of the High Court of Allahabad delivered by the Division Bench in a Civil Reference in case of **Munna Lal Vs. State of U.P. & Ors. decided on 21.02.1990 [AIR 1991 All 189]**. The relevant portion of judgment, Para Nos. 5 and 6 are being quoted herein:-

"Family Court, as such, is a substitute of a civil court in respect of the matters referred to in the explanation to sub-section (1) of Section 7 of the Act and has been declared to be a district court or the subordinate civil court as the case may be. When exercising powers under Chapter IX of the Cr.P.C. Family Court is a substitute of a Magistrate Ist Class and exercises all the powers, which are exercisable by those Magistrates. By S. 10 of the Act, C.P.C. has been made applicable to matters dealt with in the explanation to sub-section (1) of Section 7 of the Act and Family Court when dealing with these matters, has been declared to be a civil court. Likewise, Code of Criminal Procedure has been made applicable to proceedings under Chapter IX of the Cr.P.C.

6. Family Court, when exercising powers and jurisdiction relating to the matters referred to in explanation to sub-section (1) of Section 7 of the Act is a civil court, and as such, High Court has the jurisdiction to transfer the cases from one Family

Court to another under Sections 22, 23 and 24 of the C.P.C. Similarly, when Family Court is exercising the powers and jurisdiction under Chapter IX of the Cr.P.C., it is criminal court equivalent, to the Magistrate 1st Class and High Court will have the powers to transfer the case from one Family Court to another under Section 407 of the Cr.P.C.”

23. In our opinion, Section 2(4) CPC and Section 3(17) & (25) of the General Clauses Act, are not required to be discussed here to answer the questions, fall for consideration.

24. Therefore, net outcome of above discussion and enunciation is that question No.1 is answered in the manner that the Family Court lacks jurisdiction to transfer cases from one Family Court to another even within same District and Section 24 CPC empowers only the District Court or the High Court, not Family Courts to transfer cases. Since, Family Courts are governed by their own special statutes and no such power to transfer cases is conferred upon them, the Family Court cannot exercise powers of transfer under Section 24 CPC.

25. To answer the question No.2, we have already arrived at the conclusion while answering question No.1 that power of transfer has not been conferred in the Family Court by their special statute and Family Law Acts therefore, it can be held that such power of transfer cannot be vested in the Family Court by any judicial order of the learned Single Judge of the High Court and the view expressed by learned Single Judge in para Nos.4, 6 & 9 of the order dated 24.04.2017 is not an exception, hence, question No.2 stands answered accordingly.

26. While answering question No.3, it is suffice to observe herein that the learned Single Judge while passing the order dated

24.04.2017 opined its own view in Para No. 4, 6 & 9, reproduced hereinabove, but while opining such general view, it appears that learned Single Judge skipped to consider the statutory provision of Section 7 of the Family Courts Act, which do not entrust the Family Court with the power of transfer the cases. Similarly, with all humanity and regards, it can be said that learned Single Judge could not ponder over that the power of transfer the cases under Section 24 CPC is exercised, only in respect of proceedings pending in a subordinate Court, and since one Family Court is not subordinate to another Family Court in the same City/District, therefore, power of transfer can not be exercised by one Family Court to transfer the cases to another Family Court. Thus, the view expressed by learned Single Judge that, "*Family Courts situated in the same city/place can exercise power of transfer suo moto or on an application by parties to inter se transfer the cases from one Family Court to another within same city/place/district*" cannot be held to be in conformity to Section 24 CPC also. In our opinion, the view expounded by learned Single Judge in the order dated 24.04.2017, conferring to para Nos.4, 6 & 9 of the order, can be held *per incuriam* and is not a binding judicial precedent, hence, need not to be followed by the Family Courts. The question No.3 stands answered accordingly.

27. Before parting with, we deem it just and proper to observe that the order dated 06.12.2025 has been passed by the Family Court No.1, Bharatpur, without having any jurisdiction of transfer the cases, from Family Court No.1 to Family Court No.2, hence, the order be treated as non-est. We make it clear that we have not gone into merits of the transfer order dated 06.12.2025 and

parties are at liberty to invoke jurisdiction of High Court under Section 24 CPC.

28. The present Civil Reference Petition, stands disposed of.

29. Registry is directed to send copy of this order to the Family Court No.1 and 2, Bharatpur so also to circulate the same to all the Family Courts, wherever in any District, in the State of Rajasthan, more than one Family Courts have been established.

(ANIL KUMAR UPMAN),J

(SUDESH BANSAL),J

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