

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

TA No. 110 of 2013 (O&M)

Date of decision : 30.4.2015

Smt. Pooja

... Applicant

VS

Sunil

.... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Ramender Chauhan, Advocate, for the applicant.

Mr. Bhupinder Ghangas, Advocate, for the respondent.

Rajesh Bindal J.

Prayer in the present application is for transfer of divorce petition titled as “Sunil vs Smt. Pooja” filed by the respondent /husband against the applicant-wife under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') from the District Judge (Family Court), Bhiwani, to the court of competent jurisdiction at Jhajjar.

Learned counsel for the applicant submitted that marriage of the applicant was solemnised with the respondent according to Hindu rites on 11.12.2006. After she was turned out from the matrimonial home, she is residing at her parental house. She is living at the mercy of her parents. The respondent-husband is attending the proceedings in the petition filed by the wife under Section 125 Cr.P.C. and case registered under Section 498-A IPC at Jhajjar. The respondent has filed the divorce petition only to harass her and her family members. She has no source of income. She is getting meager maintenance. It is very difficult for the applicant to attend court proceedings by travelling 65 kilometers from Jhajjar to Bhiwani as there was no direct conveyance to Bhiwani. There is no one in the family to accompany her to attend the court proceedings at Bhiwani. It is the convenience of the wife which is to be seen. The respondent-husband is attending the proceedings in the litigation filed by the wife at Jhajjar. As the

husband is already attending the aforesaid cases at Jhajjar, it will not be difficult for him to attend these proceedings at Jhajjar. Considering the aforesaid facts, the petition filed by the husband at Bhiwani be transferred to the Court of competent Jurisdiction at Jhajjar.

On the other hand, learned counsel for the respondent denied the allegations levelled in the application against him but difficulties to be faced by the wife to attend the proceedings could not be disputed by him. The respondent is serving in Indian Army. He stated that FIR has been lodged against the respondent only to harass him. He is paying maintenance as per her entitlement. It is difficult for him to travel from Bhiwani to Jhajjar.

Heard learned counsel for the parties and perused the paper book.

The issue regarding transfer of case from one Court to another has been discussed by Courts in numerous judgments. In Kulwinder Kaur @ Kulwinder Gurcharan Singh vs Kandi Friends Education Trust and others, 2008 (3) SCC 659, the Hon'ble Supreme Court laid down certain parameters to be considered for the purpose, while opining that the same cannot be treated as exhaustive but illustrative in nature. The relevant Para-14 thereof is extracted hereunder:

“Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in

which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceedings. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order."

The issue regarding transfer of matrimonial proceedings almost in similar circumstances came up for consideration before this Court in a number of cases earlier. It has been the consistent view that primarily convenience of the wife is to be given weightage for ordering transfer of proceedings at or near the place where she is residing.

In Veena alias Arti vs Pawan Kumar, 1998(1) RCR (Civil) 558 (P&H), the proceedings under Section 9 of the Act filed by the husband at Sultanpur Lodhi were ordered to be transferred to Amritsar by this Court. In Smt. Sonia vs Rajnish Kumar Arora, 1997 (2) RCR (Civil) 361 (P&H), this Court ordered transfer of petition under Section 9 of the Act from Ludhiana to Amritsar. On yet another occasion in Suman vs Gopal, 2003 (4) RCR (Civil) 26, having regard to the observations of the Supreme Court in Sumita Singh vs Kumar Sanjay and another, A.I.R. 2002 SC 396 and Neelam Kanwar vs Devinder Singh Kanwar, 2000 (8) SCC 184, this Court ordered the transfer of matrimonial proceedings from Gurgaon to Faridabad. The relevant observations from Neelam Kanwar's case (supra) are extracted as under:-

"We are mindful of the fact that the petitioner is a lady and first respondent is a male, and, therefore, (for) convenience of wife, a transfer to the place where the lady is residing, would be preferred by this Court unless, it is shown that there are special reasons not to

do so. No special reason is shown.”

In Milli vs Mukesh Kumar, 2005 (4) RCR (Civil) 422, a petition filed under Section 9 of the Act, for restitution of conjugal rights, was ordered to be transferred from Jagadhari to Amritsar on an application filed by the wife.

As is evident from the cases referred to above, the principle of law with regard to transfer of cases especially regarding matrimonial disputes is quite settled, where consistent opinion is that it is always the convenience of wife which has to be given due weightage for ordering the transfer of proceedings at or near the place where the wife is residing.

In the present case, the applicant-wife is residing at Jhajjar with her parents. The petition filed by the husband for divorce is pending at Bhiwani. The wife has alleged that the petition had been filed at Bhiwani only to harass her. It would certainly be difficult and in-convenient for the wife, who is living with her parents at Jhajjar, to attend hearing of the divorce petition at Bhiwani, which is about 65 kilometers from Jhajjar. Considering the fact that it is primarily the convenience of the wife which is the paramount consideration, in my opinion, the petition filed by the respondent which is pending before District Judge (Family Court), Bhiwani, deserves to be transferred to the Court of District Judge, Jhajjar. Ordered accordingly. Parties are directed to appear before District Judge, Jhajjar, on 20.5.2015 for further proceedings. The District Judge, Jhajjar may either keep it with him or entrust the same to any other competent Court.

Further the District Judge may examine the possibility of assigning different pending cases to one Court, if the transferee court has the jurisdiction and further the Court(s) concerned should consider the request of the respondent to fix all the cases on same date, if possible.

The application stands disposed of accordingly.

30.4.2015
vs.

(Rajesh Bindal)
Judge