

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

TA No.133 of 2013 (O&M).
Decided on:-4.5.2015.

Harvinder Kaur.

.....Petitioner.

Versus

Lt. Col. (Retd.) Jagdish Pal Singh Bindra.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Present:- Mr. Sunil Kumar Nehra, Advocate
for the petitioner.

Mr. R.S. Randhawa, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J (Oral)

Vide this application, applicant-wife Smt. Harvinder Kaur seeks transfer of a petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter mentioned as the Act) filed by respondent-husband Lt. Col. (Retd.) Jagdish Pal Singh Bindra from Pathankot to Bathinda on the ground that she is residing at Rampura Phul (District Bathinda) and distance of Pathankot is more than 300 Kms. whereas Bathinda is only at a distance of around 30 Kms. from Rampura Phul. It is mentioned that pendency of petition at Pathankot causes her embarrassment and harassment at the hands of the husband.

2. This petition has been strongly contested by the respondent-husband. Seriously contesting her plea that she is permanently living at

Rampura Phul, it is claimed that, in fact, the wife is a Green Card holder and is staying in Baltimore (Maryland), USA where she is employed in a hospital and only occasionally visits India to meet her old father and younger brothers at Rampura Phul. It is urged that her plea of permanent residence at Rampura Phul has been belied even in the proceedings under Section 125 Cr.PC which were pending before Sub-Divisional Judicial Magistrate, Phul, where the wife did not produce her passport in support of her claim. Even despite having been granted last opportunity, the wife had not put in appearance before the said court resulting in a sine die adjournment of her petition under Section 125Cr.PC. Her application for retrieval of the application was dealt with by Sub-Divisional Judicial Magistrate and Sessions Judge, Bathinda orders of which authorities are under challenge in this Court by way of Criminal Misc. No.15152 of 2012.

3. It is claimed by the respondent-husband that he has paid Rs.1.37 lacs, Rs.19,000/- and Rs.5,000/- as maintenance to the wife on three occasions during the proceedings of her petition under Section 125 Cr.PC wherein he had undertaken to pay the amount of arrears of maintenance, if any, pending against him.

4. From the record, it transpires that even earlier application for transfer of the petition was moved by the wife which was dismissed on 30.11.2012. Even review petition filed against the said order of dismissal, had also met the same fate on 19.2.2013.

5. Counsel for the parties have been heard while going through the paper book.

6. At the outset, counsel for the respondent-husband has questioned maintainability of the present petition, while referring to order dated 30.11.2012 passed by this Court in TA No.48 of 2012 (O&M). During

proceedings of the said earlier transfer application, claim of the husband as is in the present petition, was that the wife was not residing at Rampura Phul, as was claimed by her. Accepting plea of the husband and finding the application of the wife to be devoid of any merit, the same was dismissed. Following lines of order dated 30.11.2012 of this Court are noteworthy, which for ready reference, are appended as below:

“It was stated in defence by the counsel for the husband that the petitioner herself is not living at Bathinda and she is living in foreign country in USA and it is also contended that he is paying Rs.7,500/- per month towards maintenance. At the previous hearing on 31.10.2012, I had directed the counsel for the petitioner to file an affidavit that she is still residing in India and that ground made out in the petition namely of inconvenience for her to conduct the case at Gurdaspur was real. The counsel for the petitioner now seeks for further time on the ground that the petitioner is not living in India presently. That vindicates the claim made by the respondent that the plea of convenience is not really genuine for a person, who is in a foreign country.

The counsel states that the petitioner has some apprehensions about her safety at the Court at Gurdaspur. I find no such averment in the petition in the manner argued by her counsel. There is no adequate ground for a transfer of the case. The petition for transfer is dismissed.”

7. Even review petition preferred by the wife qua said order dated 30.11.2012 was dismissed on 19.2.2013 wherein liberty however was given to the wife to file a fresh petition, if any ground for transfer was existent.

8. The present petition is just the repetition of the earlier petition, which as noticed earlier, was dismissed on merits. Not only averments in para Nos. 1 to 5 of this petition are exactly the same (as these were in the earlier petition) but even grounds for transfer of the same as have been given in para No.9 alongwith sub-paras of the petition, are also the same. No fresh ground after dismissal of the earlier application for transfer, has been

pleaded or established. In reply to the present application, plea of the husband in para No.3 thereof is as under:

“That it is respectfully submitted that the transfer application No.133/2013 has exactly the same averments from para No.1 to 5 and also exactly the same grounds for transfer, given in para 9 alongwith sub paras of the petition. No fresh ground at all has been given. It is, therefore, respectfully submitted that this present, second transfer application is not maintainable on the same facts and grounds and, therefore, deserves to be dismissed.”

9. There is no repudiation of this claim of the respondent-husband. It is evident that the present petition is nothing but incarnation of the earlier one (without any new cause of action) which petition was dismissed on merits vide detailed order of this Court on 30.11.2012.

10. Counsel for the petitioner-wife has urged that convenience of the wife is to be seen. Support has been sought from ***T. Gayatri Devi Versus Dr. Tallepaneni Sreekanth 2013(4) SCT 692 (Supreme Court)***. Support has also been sought from ***Rakhi Banerjee Versus Subhankar Mukherjee 2009(1) RCR (Civil) 60 (Supreme Court)*** urging that where wife was unemployed and had a small child living with her retired parents, suit filed by the husband in Chennai High Court claiming Rs.15 lacs for causing emotional pain and suffering etc., was transferred within the jurisdiction of Calcutta High Court noticing the fact that four other cases between the parties were also pending within the jurisdiction of Calcutta High Court and the respondent-husband had also been transferred from Chennai to Mumbai.

11. Support has also been sought from ***Vandana Sharma Versus Rakesh Kumar Sharma 2008(4) RCR (Civil) 421 (Supreme Court)*** wherein the petitioner-wife had two minor daughters and there was no male member to accompany her to attend proceedings under Section 27 of the Special

Marriage Act, 1954 transfer of which proceedings from Delhi to the Court at Panchkula had been sought. Transfer had been allowed, inter alia, on the ground that one 7 months old daughter was residing with the wife and the second one was also minor. Support has also been sought from ***Sumita Singh Versus Kumar Sanjay and another 2002 AIR (SC) 396 (Supreme Court)*** where case was transferred from Bihar to Delhi as the wife was working and there was no one to support her at Bihar. Reference has also been made to ***Anju Versus Sanjay 2011(6) RCR (Civil) 112 (P&H)***.

12. Facts of the case in hand are entirely different as compared to the facts of the cited authorities. In the present case, averments of the respondent-husband in his reply to the present application have remained uncontroverted. These are as under:

1. The petitioner-wife is a permanent resident of USA and is gainfully employed there;
2. The petitioner-wife is shown to be wife of some other than the respondent herein;
3. Both daughters of the couple herein are married in USA and are living there as U.S. Citizens;
4. The petitioner-wife had filed a petition under Section 125 Cr.P.C. seeking maintenance from respondent-husband on 9.9.2006. Vide order dated 11.8.2007 of the court concerned, the said petition was sine die consigned to the record room as the same was not prosecuted by the petitioner-wife. Order of 11.8.2007 passed by the Judicial Magistrate Ist Class, Bathinda is reproduced as below:

“Case called again at 9.30 A.M. Counsel for the applicant has come present and requested for an adjournment. None of the applicants is present in the court. Counsel for the respondent presses for the dismissal of application on the ground that the applicants have not complied with the order which is opposed by learned counsel for the applicant. Perusal of

the file shows that this court ordered for personal appearance of the applicants on 11.11.2006. Application was being adjourned for appearance of the application till date, but the applicants have not appeared in the court. Applicants were granted last opportunities on 9.4.2007, 14.5.2007, 9.6.2007 and for today. Therefore, from the circumstances it appears that applicants were not interested to come present in the court and therefore, application is adjourned sine die and will be taken up on an application moved by the applicant. Till then file be consigned sine die.

*Pronounced
11.8.2007*

*Sd/-
Ranjeet Kaur
Judicial Magistrate Ist Class,
Bathinda.”*

5. Without seeking restoration of sine die adjourned petition under Section 125 Cr.PC, the petitioner-wife had filed yet another petition under Section 125 Cr.PC on 17.3.2010. Orders passed by the Sub-Divisional Judicial Magistrate, Bathinda and Sessions Judge, Bathinda qua that are under challenge at the instance of the respondent-husband in this Court vide Criminal Miscellaneous No.15152/2012;
6. The respondent has not been neglecting payment of maintenance amount. He paid Rs.1.37 lacs, Rs.19,000/- and Rs.5,000/- as maintenance to the petitioner and had shown his readiness and willingness to pay even the remaining amount of maintenance, if any, to the satisfaction of the petitioner; and,
7. Earlier transfer application No.48 of 2012 preferred by the petitioner-wife on the same cause of action as is the present one, was dismissed on 30.11.2012 and even review petition against that was dismissed on 19.2.2013.

13. In view of entirely different factual matrix, no help from the cited authorities is available to the petitioner-wife.

14. The most important aspect is as to whether the wife has approached this Court with clean hands and has been fair in conducting and

dealing with the present proceedings? As is being explained hereafter, the answer is big No. It is abundantly clear that the present application for transfer is substantially the same petition which was dismissed on merits on 30.11.2012 and even review application against the same had been dismissed on 19.2.2013.

15. There is no new ground made out justifying transfer of the divorce petition filed by the husband at Pathankot to Bathinda particularly when on same pleas of the wife, as noticed earlier, transfer application was dismissed. There is nothing on record to support the present petition on its own merit, especially in the wake of dismissal of earlier petition of the wife on the same grounds.

16. When the husband consistently is taking up a plea that the wife is a Green Card holder and is permanently residing in USA, where she is gainfully employed at Baltimore (Maryland), USA in a hospital and visits India only off and on to see her old father and younger brothers at Rampura Phul, the wife could have rebutted this claim of the husband by annexing copy of her passport. She could have proved her bonafides by production of ration card, telephone bill, electricity bill etc. in her name at her alleged residence at Rampura Phul showing her claimed continued residence in India.

17. On the contrary, the husband has taken pains to refer to copy of orders passed by the Courts at Rampura Phul. The order passed by the Sub-Divisional Judicial Magistrate, Rampura Phul is as under:

*“Present:- Sh. A.S. Bedi, Counsel for the applicant.
Sh. H.S. Sidhu, Counsel for respondent.*

Heard. The respondent seeks production of passport of the applicant. The respondent alleges that the applicant is US Citizen. She is gainfully employed in USA and

in her passport she is shown to be wife of another man. In view of the allegations of the respondent I am of the considered view that the passport of the applicant is a necessary document. The applicant should have no objection to the production of the passport in the Court for one time only. Accordingly an opportunity is granted to the applicant present in the court to produce the passport failing which appropriate inference will be drawn. Now to come up on 25.11.2011 for the same purpose.”

18. Despite this clear order, no compliance was made on 25.11.2011. The Court had pointedly noted that the applicant-wife was not interested to part with her passport. The order dated 25.11.2011 of the said court is reproduced as below:

“Present:- As above.

Passport not produced. The applicant does not want to produce her passport. So written reply be filed. Also to come up on 5.12.2011 for consideration on application for interim maintenance.

*Sd/-
(G.S. Dhillon), PCS
SDJM, Phul.”*

19. Even in the present proceedings as has already been noticed, copy of the passport with relevant entries of visits to USA or to India, has not been annexed.

20. Law is not a foe. It is a friend. A friend indeed. There is no one-upmanship in friendship. Law is not be dwarfed by a litigant. Law courts should not be pygmised. If a litigant wants to take undue benefit, law does not permit it. Law catches up with the violator. Law gives balming support and sustenance to those who submit to it. If a litigant seeking succor and strength from law, batters and bruises it instead, law does not take it kindly; neither the law courts would.

21. The petitioner-wife has tried to overreach the law from which it had sought help through this Court. The petition is clearly a grave misuse of the process of the court. When the petitioner is permanent resident of USA and is residing there and visits India only occasionally and both daughters of this marriage are settled in USA as its citizens and are married there, entire edifice of the petition is misfounded.

22. Keeping in view conduct of the wife in disclosing less and concealing more of the important facts, when after dismissal of her earlier application on 30.11.2012 and review application on 19.2.2013, no fresh ground is made out, this transfer application is dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

May 04, 2015

'Yag Dutt'

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes