

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

Transfer Application No.179 of 2013 (O&M)
Date of decision: 24.03.2015

Milan Priya Dua

.....Applicant

Versus

Dr. Chandan Dua

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Munish Gutpa, Advocate and
Mr. Sanjeev Roy, Advocate for the wife.

Mr. B.D. Sharma, Advocate for the husband.

RAJESH BINDAL, J

This order will dispose of two Transfer Applications bearing No.179 and 550 of 2013.

Transfer Application No.179 of 2013 has been filed by the wife seeking transfer of petition filed by the husband under Section 9 of the Hindu Marriage Act, 1955 (for short “the Act”) for restitution of conjugal rights from Faridabad to Jalandhar.

Transfer Application No.550 of 2013 has been filed by the husband seeking transfer of divorce petition filed by the wife under Section 13 of the Act from Jalandhar to Faridabad.

Learned counsel for the wife submitted that marriage between the parties was solemnized on 18.2.2006 at Jalandhar. Out of the wedlock, a daughter was born on 15.8.2007. After the marriage, the parties shifted to Faridabad, however, on account of certain differences, they could not live together. At present, the wife is living at Jalandhar with her minor daughter. Prior to that she was serving at Gurgaon and used to come to Jalandhar on weekends. Her father has already expired. She has old mother. Her brother is physically challenged. Even the daughter is also suffering from nephrotic syndrome.

It was further submitted that besides two cases in question, there are three other cases, which are pending at Jalandhar, namely, a

petition for custody of the child filed by the husband, in which as per the interim arrangement, the husband comes to Jalandhar to meet the child every month; a complaint filed by the wife under Section 406/498A IPC, in which the husband has been summoned and an application filed by the wife under Section 125 Cr.P.C. for claiming maintenance. Once, the husband is coming to Jalandhar to attend hearings in the aforesaid cases, even hearing in divorce petition can also be attended by him. At the time of filing of the divorce petition, the husband was posted at Faridabad, however, now he has been transferred to Ambala. Jalandhar is nearer than Faridabad from Ambala.

On the other hand, learned counsel for the husband submitted that once, the husband is attending hearings of four cases at Jalandhar, the wife can attend hearing of one case at Faridabad. He further submitted that if considered appropriate, the petition filed by the husband at Faridabad can be transferred to Ambala, which will be closer to Jalandhar as compared to Faridabad. Learned counsel for the husband further submitted that the wife is not entitled to any relief as she has mis-stated the facts in the petition regarding her staying at Jalandhar, whereas she was serving at Gurgaon.

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

The fact that when the petition for restitution of conjugal rights was filed by the husband at Faridabad, he was posted there and presently he is posted at Ambala as Ayurvedic Medical Officer, is not in dispute. At present, following four cases are pending at Jalandhar:-

1. A complaint filed by the wife under Section 406/498-A IPC, in which, the husband has been summoned.
2. An application filed by the wife under Section 125 Cr.P.C. for claiming maintenance.
3. A divorce petition under Section 13 of the Act filed by the wife.
4. A petition filed by the husband for custody of the minor daughter living with the wife. In this case, the husband has been granted visiting rights to meet the child on every third Saturday in the court premises from 12:00 noon to 4:00 p.m.

Only the petition under Section 9 of the Act filed by the husband is pending at Faridabad, which was filed by him, when he was posted there. Now he is also posted at Ambala. The difficulty pointed out by the wife is that her father has already expired and one brother is physically disabled. She has old mother and 7½ years girl child to take care, who is also suffering from nephrotic syndrome.

Considering the aforesaid facts, in my opinion, the prayer made by the wife in TA No.179 of 2013 for transfer of the petition filed by the husband from Faridabad to Jalandhar deserves to be accepted. Hence, the same is directed to be transferred from Family Court, Faridabad to District Judge, Jalandhar. The prayer made by the husband for transfer of divorce petition filed by the wife from Jalandhar to Faridabad is rejected, as there are two other cases also pending at Jalandhar.

A copy of the order be sent to the District Judge, Jalandhar to enable him to examine and direct, if possible, transfer of different cases in one court, if having jurisdiction. It is for the convenience of the parties. The husband shall also be at liberty to request for listing of all the cases on one day, in case his appearance is required, even if pending in different courts.

The parties are directed to appear before the District Judge, Jalandhar on 18.4.2015 for further proceedings. The District Judge, Jalandhar may either to keep the case with him or entrust the same to some other competent court.

The petitions stand disposed of accordingly.

Before parting with the order, this Court would like to make observation regarding visiting rights of the parties to meet their children. Many times the orders are passed for fixing the place of meeting in the court, as is in the case in hand as well. The atmosphere in the court is not such, where the child of a tender age should be asked to come to meet his/her father/mother or any other family members. Instead of that, it would be appropriate, if at all, the court is to be fixed as a meeting place, it should be in the ADR Centres, which are existing in all the districts, where the atmosphere is quite congenial. For the purpose, if required, it can be under the supervision/guidance of the Secretary, District Legal Services Authority or any other officer/official working in the ADR Centres.

Copy of the order be sent to all the District & Sessions Judges in the States of Punjab, Haryana and Chandigarh and to the Member Secretaries of Punjab, Haryana and Chandigarh Legal Services Authorities, for information.

(RAJESH BINDAL)
JUDGE

24.03.2015

sharmila

(Refer to reporter)