

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

TA No. 363 of 2013 (O&M)

Date of decision : 23.4.2015

Kuldeep Kaur

... Applicant

vs

Amarjit Singh

.... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. B. C. Gupta, Advocate, for the applicant.

None for the respondent despite service.

Rajesh Bindal J.

Prayer in the present application is for transfer of divorce petition titled as “Amarjit Singh vs Kuldeep Kaur” filed by the respondent / husband against the applicant-wife under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') from the Court of learned Additional District Judge, Kapurthala to the court of competent jurisdiction at Ludhiana.

Learned counsel for the applicant submitted that marriage of the applicant was solemnised with the respondent according to Sikh rites on 24.11.2010. Out of the wedlock, one son namely Balkirat Singh now aged 3½ years was born. 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 petitions filed by the wife under Section 125 Cr.P.C. and under the Protection of Women from Domestic Violence Act, 2005 at Ludhiana. The respondent has filed the divorce petition only to harass her and her family members. She has no source of income. It is very difficult for the applicant to attend court proceedings by travelling 95 kilometers from Ludhiana to Kapurthala with minor child. There is no one in the family to accompany her to attend the court proceedings at Kapurthala. 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 Ludhiana. As the husband is

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

No one has appeared for the respondent at the time of hearing.

Heard learned counsel for the applicant 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 Ludhiana at her parents house with minor son. The petition filed by the husband for divorce under Section 13 of the Act is pending at Kapurthala. The wife has alleged that the petition has been filed at Kapurthala only to harass her. It would certainly be difficult and in-convenient for the wife, who is living with her parents at Ludhiana, to attend hearing of the divorce petition at Kapurthala with minor son, which is about 95 kilometers from Ludhiana. 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 in the Court of Additional District Judge, Kapurthala deserves to be transferred to the Court of District Judge, Ludhiana. Ordered accordingly. Parties are directed to appear before District Judge, Ludhiana, on 15.5.2015 for further proceedings. The District Judge, Ludhiana 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 cases to one Court, if that 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.

23.4.2015
vs.

(Rajesh Bindal)
Judge