

TA-580-2013 (O&M)

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

TA-580-2013 (O&M)

Date of decision: 13.8.2015

Tania Kapoor

...Applicant

Versus

Rajiv Kapur

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mrs.Puja Chopra, Advocate for the applicant

Mr.SS Katnoria, Advocate for the respondent

SNEH PRASHAR, J.

The present application under Section 24 of the Code of Civil Procedure (for short ' CPC') has been filed for transfer of petition titled as “Rajiv Kapur vs. Tania Kapoor” filed under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') by respondent-husband from the court of learned Additional District Judge, Panchkula to the court of compete jurisdiction at Patiala.

From the facts pleaded by the parties it emerges that the marriage between the applicant and respondent was solemnized on 17.11.2004 at Patiala. It was the second marriage of the applicant as well as the respondent-husband. Rajiv Kapur -husband was having a daughter from first marriage. The applicant pleaded that she was

being maltreated and harassed for bringing insufficient dowry. Her brother and mother tried their best to persuade the respondent-husband to rehabilitate her, but to no effect. Ultimately, she was turned out of the matrimonial home and is presently residing with her mother at Patiala, who is a cancer patient.

The submissions made by Mrs. Puja Chopra, Counsel for the applicant and Mr. SS Katanor, Advocate for the respondent have been heard.

It was submitted on behalf of the applicant that she had filed a petition under Section 12 of the Domestic Violence Act at Panchkula, which was dismissed in default as she could not pursue the same properly. The petition under Section 13 of the Act had been filed by the respondent-husband as a counter blast to the said petition. Except her brother, who is living at Ludhiana, there is no male member in her family to accompany her to Panchkula. She is residing with her mother at Patiala, who too is suffering from breast cancer and has undergone surgery. She also has no independent source of income and it is difficult for her to attend the court proceedings at Panchkula.

On the other hand, learned counsel for the respondent-husband submitted that the distance between Patiala and Panchkula is only about 70 Kms. The applicant is being paid a sum of Rs. 7500/- per month as maintenance allowance by the respondent-husband. The

allegations levelled against the respondent-husband and his mother are totally vague and general in nature. Submitting that he is having a daughter and old mother and there is no one except him in the family to look after them, learned counsel prayed that the present application be dismissed.

In a dispute between the husband and the wife, normally the wife is at the receiving end. The divorce petition has been initiated by the husband. The petitioner -wife is residing with her mother, who is a cancer patient. Thus, the balance of convenience is in favour of the applicant/wife. If the distance between Patiala and Panchkula is not much, the respondent-husband can willfully take the trouble of travelling instead of putting that burden on the petitioner-wife.

It is well settled principle of law that convenience of the wife is to be seen in the matters filed by the husband against the wife as held by the Hon'ble Supreme Court in the cases of **Sumitra Singh vs. Kumar Sanjay and another, AIR 2002 SC 396, Neelam Kanwar vs Devinder Singh Kanwar, 2001(1) M.L.J. 509 (SC), and Mangla Patil Kale vs. Sanjeev Kumar (2003) 10 SCC 280.**

Admittedly, the applicant is presently residing at Patiala, it would certainly be difficult for her, having no source of income and saddled with the responsibility of her mother, who is suffering from cancer, to attend the court proceedings at Panchkula.

In the above premises, the instant transfer application is allowed. Petition under Section 13 of the Act titled as “Rajiv Kapur vs.

Tania Kapoor” is withdrawn from the Court of learned Additional District Judge, Panchkula and is transferred to the court of competent jurisdiction at Patiala. The complete record pertaining to the case in question shall be sent by the trial Court at Panchkula to the learned District Judge, Patiala, within two weeks from the date of receipt of a copy of this Order. The learned District Judge, Patiala will either dispose it of himself or entrust it to any Court of competent jurisdiction.

The parties shall appear before the Court of District Judge, Patiala, on 16.9.2015.

13.8.2015
gsv

(SNEH PRASHAR)
JUDGE