

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

TA No.639 of 2014 (O&M).
Date of Decision: 30.11.2015.

Anamica Pathania/ManhasApplicant.

VERSUS

Vivek ManhasRespondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Shashi Kant Gupta, Advocate for the applicant.

Mr. Pushpinder Kaushal, Advocate for the respondent.

SNEH PRASHAR, J.

Invoking the provisions of Section 24 of the Code of Civil Procedure applicant-wife Smt. Anamica Pathania/Manhas seeks transfer of the petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short, “the Act of 1955”) by respondent-husband from the Court of Additional District Judge, SAS Nagar, Mohali to the Court of competent jurisdiction at Pathankot.

The submissions made by Mr. Shashi Kant Gupta, learned counsel representing the applicant and Mr. Pushpinder Kaushal, learned counsel representing the respondent have been heard.

It is submitted on behalf of the applicant that she was married

to the respondent on 26.02.2009 at Sujanpur, District Pathankot as per Hindu rites and ceremonies. A son was born out of the wedlock on 25.12.2010 who is under the care and custody of the applicant. The respondent deserted the applicant without any reasonable cause and she alongwith her minor son is presently residing with her parents-in-law at Pathankot. She has come to know that the respondent intends to marry some other lady and for that reason has filed a divorce petition at Mohali where he is living. The distance between Pathankot and SAS Nagar, Mohali is about 250 kilometers and it is difficult for her to travel such long distance for contesting the petition at Mohali.

The request of the applicant for transfer of the petition has been opposed by the respondent on the ground that the applicant has not approached this Court with clean hands. In her pleadings, she submitted that she is a housewife whereas as per the information received by him under the Right to Information Act, she is employed in a School since 08.05.2013. She has also alleged that she is facing great difficulty in attending the Court at Mohali by travelling alongwith her minor son such a long distance of about 250 kilometers, whereas she has not appeared even once before the Court at Mohali and is represented by a counsel. To support his argument that mere distance is not a sufficient ground for transfer of the case and that when a person does not approach the Court with clean hands, is not entitled to any kind of relief, learned counsel relied upon *Surajmukhi vs. Chhotu Ram, 2009(1) ICC 475* and *Kishore Samrite vs. State of U.P. and others, 2013(2) SCC 398.*

The cases relied upon by learned counsel for the respondent were decided on their own facts. The petition in hand is on a completely different footing. The applicant alongwith her minor child is residing with her parents-in-law at Pathankot which means she is residing in her matrimonial home whereas the respondent has filed a petition under Section 13 of the Act of 1955 at SAS Nagar, Mohali where he himself is residing. It was nowhere stated by the applicant that she is finding difficult to travel such long distance of about 250 kilometers for attending the hearing in the petition at Mohali. She has only pleaded that she has a small child aged about 5 years and apart from fearing danger to her life she is also unable to travel from Pathankot to SAS Nagar, Mohali which are located at a distance of about 250 kilometers from each other. It has been held in ***Sumita Singh vs. Kumar Sanjay and another, AIR 2002 (SC) 396*** and ***Neelam Kanwar vs. Devinder Singh Kanwar, 2000(8) SCC 184*** that convenience of the wife has to be taken into consideration in such like matters.

In view of the facts, discussed above and finding that it will indeed be difficult for the applicant to travel such long distance alongwith the minor child to contest the petition and Pathankot is the place where she is residing at her matrimonial home, the petition filed by the respondent under Section 13 of the Act of 1955 pending in the Court of learned Additional District Judge, SAS Nagar, Mohali is withdrawn from the said Court and is transferred to the Court of competent jurisdiction at Pathankot. The file shall be sent by the trial Court to the District and Sessions Judge, Pathankot within two weeks from the date of receipt of copy of this order,

who will either keep the petition himself/ herself or will entrust the same to any other Court of competent jurisdiction at Pathankot.

The parties are directed to appear before the District Judge, Pathankot on 12.01.2016.

(SNEH PRASHAR)
JUDGE

30.11.2015.
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