

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.154 of 2016

Date of decision: 20.05.2016

Nisha Mishra

... Applicant

Vs.

Sandeep Gogna

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Dhaman Jeet Bhoriwal, Advocate
for the applicant.

Mr. Sarju Puri, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J. (ORAL)

Applicant-wife, by way of present transfer application under Section 24 of the Code of Civil Procedure, seeks transfer of a petition under Section 9 of the Hindu Marriage Act, 1955 (for short 'HM Act') filed by the respondent-husband from Nawanshahr (SBS Nagar) to Bathinda.

Notice of motion was issued and in the meantime, further proceedings before the learned trial Court were stayed.

Reply on behalf of the respondent filed in the Court today, is taken on record and copy thereof has been supplied to learned counsel for the applicant.

Heard learned counsel for the parties.

It has gone undisputed before this Court that there is a child out of this wedlock. Applicant-wife, along with her minor child, is living with her parents at Bathinda. Neither the applicant-wife is having any regular source of income nor the respondent-husband is paying any amount of maintenance either for the applicant-wife or for the child. Distance between Bathinda and Nawanshahr (SBS Nagar) is more than 200 kilometers.

Although, learned counsel for the respondent could not deny the abovesaid factual aspect of the matter, yet to oppose the instant transfer application, he placed reliance on two judgments of the Hon'ble Supreme Court in **N.K. Nair and another Vs. Kavanugal Aanattu Radhika, 2005 (13) SCC 439** and **Jitendra Singh Vs. Bhanu Kumari and others, 2009 (1) SCC 130**, to contend that it is not always mandatory to accept the transfer applications, filed at the instance of the wife.

After hearing the learned counsel for the parties and careful perusal of the record of the case, this Court is of the considered opinion that instant transfer application deserves to be allowed. It is so said because responsibility of the wife for bringing up the child, her financial status, source of income, conduct of the respondent-husband while not paying the amount of maintenance either for the applicant-wife or for the child and distance between two places, besides the convenience of the wife, are some of the relevant considerations for deciding the transfer applications, like the present one.

So far as the abovesaid judgments of the Hon'ble Supreme Court relied upon by learned counsel for the respondent are concerned, there is no

dispute about the observations made therein. However, a close perusal of the cited judgments would show that none of them is of any help to the respondent, these being distinguishable on facts. It is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Further, the abovesaid view taken by this Court on ordering the transfer of the petition under Section 9 of the HM Act filed by the respondent-husband from Nawanshahr (SBS Nagar) to Bathinda, is supported by the following judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court: -

1. ***Mrs. Maneka Sanjay Gandhi and another Vs. Miss Rani Jethmalani, AIR 1979 (SC) 468.***
2. ***Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4.***
3. ***Neelam Kanwar Vs. Devinder Singh Kanwar, 2000 (10) SCC 589.***
4. ***Sumita Singh Vs. Kumar Sanjay and another, AIR 2002 (SC) 396.***
5. ***Mangla Patil Kale Vs. Sanjeev Kumar Kale, 2003 (10) SCC 280.***
6. ***Fatema Vs. Jafri Syed Husain @ Syed Parvez Jafferi, AIR 2009 (SC) 1773.***
7. ***Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani, AIR 2009 (SC) 1374.***

8. ***Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others, AIR 2008 SC 1333.***
9. ***Nisha Vs. Dharmenda Pratap Singh Rathore, 2015 (3) All. LJ 168.***
10. ***M.V. Rekha Vs. Sathya, 2011 (2) HLR 34.***
11. ***Sneha Vs. Vinayak, 2013 ILR (Karnataka) 165.***
12. ***Rimpal Vs. Balinder Kumar, 2010 (7) RCR (Civil) 286.***
13. ***Anju Vs. Sanjay, 2011 (6) RCR (Civil) 112.***
14. ***Komal Devi @ Komal Kumari @ Komal Rani Vs. Harbhajan Singh, 2012 (8) RCR (Civil) 84.***

The relevant observations made by the Hon'ble Supreme Court in para 14 of its judgment in **Kulwinder Kaur @ Kulwinder Gurcharan Singh's** case (supra), which can be gainfully followed in the present case, read as under: -

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket 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 proceeding. 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.”

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant transfer application deserves to be accepted and the same is hereby allowed. Petition under Section 9 of the HM Act titled as Sandeep Gogna Vs. Nisha Mishra bearing No.HMA/137/2015 filed by the respondent-husband, is ordered to be transferred from Nawanshahr (SBS Nagar) to Bathinda.

Accordingly, learned District Judge, Nawanshahr (SBS Nagar) is directed to send the complete record of the abovesaid petition, to the learned District Judge, Bathinda at an early date and in any case within a

period of one month from the date of receipt of certified copy of this order.

Learned District Judge, Bathinda is also directed to assign the abovesaid case to the learned Court of competent jurisdiction for its early decision, in accordance with law.

With the abovesaid observations made and directions issued, instant transfer application stands disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

20.05.2016
vishnu