

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.226 of 2016

Date of decision: 30.03.2016

Shivani Rana

... Applicant

Vs.

Vikas Kapil Sharma

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Kartik Gupta, Advocate
for the applicant.

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 instant 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 Chandigarh to Panchkula.

Heard learned counsel for the applicant.

It is a matter of record that Panchkula and Chandigarh are adjoining with each other. There is hardly any distance, which may justify the transfer of a petition under Section 9 of HM Act filed by the respondent-husband from Chandigarh to Panchkula. Further, it is own pleaded and argued case on behalf of the applicant that she is residing at Chandimandir.

In view of the above, no case for transfer of the petition under Section 9 of

the HM Act is made out.

The abovesaid view taken by this Court also finds support from 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 Jafferri*, 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.”

Again, deliberating on an identical issue, in the case of **Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4**, the Hon'ble Supreme Court held as under: -

“The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has, therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude- for the ends of justice- have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is

done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone.

(emphasis supplied) ”

The argument raised by learned counsel for the applicant that she is residing with a minor child at Chandimandir and the husband is although residing at Mohali yet working at Panchkula, besides the fact that other cases filed by the applicant-wife are pending at Panchkula, would be hardly of any consequences, because of the undisputed fact situation that Panchkula and Chandigarh are adjoining with each other.

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 application is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant application is dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

30.03.2016
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