

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

**TA No. 60 of 2016 (O&M)
Date of decision: 12.5.2016**

Sukhjit Sandhu

.. Applicant

Vs.

Devinder Dayal Singh Sandhu

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ranjit Saini, Advocate
for the applicant.

Mr. Keshav Pratap Singh. Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Applicant-wife, by way of instant transfer application under Section 24 of the Code of Civil Procedure, 1908, seeks transfer of a petition under Section 10 of the Hindu Marriage Act, 1955 ('HM' Act for short), filed by the respondent-husband, from Karnal to Chandigarh.

Notice of motion was issued and interim direction was issued.

Heard learned counsel for the parties.

It has gone undisputed before this Court that applicant as well as the respondent are senior citizens. It is very unfortunate to

note that at this stage of their life, it has become difficult for them to stay together because of temperamental differences. Applicant wife is staying Chandigarh. It is stated that applicant is suffering from some age related ailments. Neither the applicant-wife is having any regular source of income, nor the respondent-husband is paying any maintenance amount to her. Distance between Karnal and Chandigarh is more than 120 Kilometers. .

In view of the abovesaid undisputed fact situation obtaining in the present case, this Court is of the considered opinion that instant transfer application deserves to be allowed. It is so said because financial status of the wife, her source of income, conduct of the respondent-husband in not paying the maintenance amount and distance between two places, besides her convenience, are some of the relevant considerations for deciding the transfer application like the present one.

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 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.”

The cardinal principle for exercise of power under Section 24 of the Civil Procedure Code is that the ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever the Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereto and circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at by the Courts, while deciding a transfer application

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 10 of the HM Act filed by the respondent-husband titled as Lt. Gen (Retired) Dr. Devinder Dayal Singh Sandhu Vs. Smt. Sukhjeet Sandhu, is ordered to be transferred from Karnal and Chandigarh.

Accordingly, the learned District Judge, Karnal, is directed to send complete record of the abovesaid petition to the learned District Judge, Chandigarh, at an early date but in any case within a period of one month from the date of receipt of certified copy of this order.

The learned District Judge, Chandigarh is also directed either to decide the case himself or assign it to the learned court of competent jurisdiction, for an early decision, in accordance with law.

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

**(RAMESHWAR SINGH MALIK)
JUDGE**

12.5.2016
AK Sharma