

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

TA No.340 of 2015
Date of Decision : 12.5.2016

ArchanaApplicant

Vs.

Jagdeep SinghRespondent

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : None for the applicant.
Mr. Sehajbir Singh, Advocate for the respondent.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Applicant-wife, by way of instant application under Section 24 of the Code of Civil Procedure, ('CPC' for short), seeks transfer of a divorce petition filed by the respondent husband from Patiala to Chandigarh.

Notice of motion was issued. None was present on behalf of the applicant on 21.3.2016 and the case was adjourned for today. Nobody has come present on behalf of the applicant today itself.

Heard learned counsel for the respondent.

It has gone undisputed before this court that there is a child out of this wedlock. Applicant wife alongwith her minor child is staying with her parents at Chandigarh. She is not having any regular source of income.

Distance between Chandigarh and Patiala is more than 65 kms.

In view of the abovesaid undisputed fact situation obtaining in the present case, this court is of the considered opinion that the present transfer application deserves to be allowed. It is so said because responsibility of the wife for bringing up the child, her financial status, her source of income, conduct of the parties 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.

The abovesaid view taken by this court also finds support from the order dated 16.3.2016 passed by this court in TA No.945 of 2015 (Sushma and others Vs. Kapil @ Sahil Bansal), which, in turn, was based on the judgements of the Hon'ble Supreme Court, as well as different High Courts, including this court.

After hearing learned counsel for the respondent, the technical objection raised by him that instant transfer application is barred under the provisions of Order 9 Rule 9 CPC is to be noted to be rejected. It is so said because even if an earlier application was dismissed for non-prosecution because of the mistake on the part of the counsel for the applicant, the applicant would not be made to suffer for none of her fault. Further, rules of procedure are hand-made of justice and cannot be permitted to come in the way for doing substantial justice between the parties. In this view of the matter, the solitary contention raised by learned counsel for the respondent has been found wholly misplaced and the same cannot be accepted.

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. Divorce Petition under Section 13 of the Hindu Marriage Act titled as Jagdeep Singh Vs. Archana is ordered to be transferred from Patiala to Chandigarh.

Accordingly, learned District Judge, Patiala, is directed to send the complete record of the abovesaid divorce petition filed by the respondent-husband, to the learned District Judge, Chandigarh 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, Chandigarh is also directed either to decide the case himself or assign it 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.

12.5.2016
GS

(RAMESHWAR SINGH MALIK)
JUDGE