

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

**TA No. 797 of 2015 (O&M)
Date of decision: 12.4.2016**

Jagroop Kaur

.. Applicant

Vs.

Varinder Singh Bhela @ Tony

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rishu Mahajan, Advocate
for the applicant.

Mr. Arun Takhi, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Applicant-wife, by way of instant transfer application under Section 24 read with Section 151 of the Code of Civil Procedure, 1908, seeks transfer of divorce petition under Section 13 of the Hindu Marriage Act, 1955, ('HM Act' for short), filed by the respondent-husband, from Hoshiarpur to Amritsar.

Notice of motion was issued and further proceedings before the learned trial court were stayed. Learned counsel for the respondent put appearance on 4.2.2016 and the case was adjourned to 4.3.2016 for arguments. On 4.3.2016, none appeared and in the

interest of justice, case was adjourned to today. However, no reply has been filed so far.

Heard learned counsel for the parties.

It has gone undisputed before this Court that applicant is living with her parents at Amritsar. Applicant-wife is not having any regular source of income. The respondent husband is not paying any amount of maintenance to the applicant-wife. Distance between Hoshiarpur and Ludhiana is more than 100 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 and distance between two places, besides her convenience, are some of the relevant considerations for deciding the transfer application like the present one.

The judgment relied upon by the learned counsel for the respondent, rendered by the Hon'ble Supreme Court, in Anindita Das Vs. Srijit Das, 2006 (9) SCC 197 and order dated 11.1.2016 passed by this Court in TA No. 659 of 2015 (Sangeeta Rani Verma and others VS. Dalip Kumar Verma), in support of his contentions, to oppose the instant application have been duly considered.

So far as observations made by the Hon'ble Supreme Court as well as this Court in the cases relied upon by learned counsel for the respondent are concerned, there is no dispute about the law laid down therein. However, on a close perusal of the abovesaid judgment and order, the same have not been found of any help to

the respondent, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

In addition to the above, the 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** (supra), 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 abovesaid law laid down by the Hon'ble Supreme has also been followed by this Court in order dated 16.03.2016 passed by this Court in TA No.945 of 2015 (Sushma and others Vs. Kapil @ Sahil Bansal), which, in turn, was based on the judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court.

Another argument raised by learned counsel for the respondent that applicant has not approached this Court with clean hands and has concealed relevant facts from the notice of the Court has been found wholly misplaced and the same is only to be noted to be rejected.

Reverting to the facts and circumstances of the present case and respectfully following the law laid down by the Hon'ble Supreme Court and different High Courts, including this Court, in the cases referred to hereinabove, it is unhesitatingly held that applicant-wife has made out a case for transfer of the divorce petition filed by the respondent from Hoshiarpur to Amritsar. It is also pertinent to note that other litigations between the parties, at the instance of the applicant-wife, are also pending at Amritsar.

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 13 of the HM Act filed by the respondent husband is ordered to be transferred from Hoshiarpur to Amritsar.

Accordingly, the learned District Judge, Hoshiarpur, is directed to send complete record of the abovesaid petition to the learned District Judge, Amritsar, 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, Amritsar, 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**

12.4.2016
AK Sharma