

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

TA No. 654 of 2014

Date of decision: 10.3.2016

Neelam Rani

.. Applicant

Vs.

Ram Pal

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Shrey Goel, Advocate
for the applicant.

Mr. V.K., Arora, 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 instant transfer application under Section 24 read with Section 151 of the Code of Civil Procedure, 1908, seeks transfer of a petition under Section 13 of the Hindu Marriage Act, 1955, ('HM Act' for short), filed by the respondent-husband, from Kurukshetra to a court of competent jurisdiction at Kaithal.

Notice of motion was issued and pursuant thereto, reply has been filed.

Undisputed facts between the parties are that, marriage

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between the parties took place on 23.3.2004. There is a child out of the marriage who is residing with the applicant-wife. In an earlier litigation, a petition under Section 9 of the HM Act was filed by the respondent-husband and as a consequence thereof, compromise was arrived at between the parties because of which said petition was withdrawn by the respondent. However, as alleged by the applicant-wife, respondent-husband did not mend his ways and again started giving beatings to the applicant-wife. Thereafter, he himself filed a petition under Section 13 of the HM Act at Kurukshetra. Applicant-wife, alongwith her minor child, is residing with her parents. As per school certificate (Annexure P-2), child is studying in 3rd standard in a school at Kaithal. Applicant-wife is not having any regular source of income.

Learned counsel for the applicant-wife submits that it would not only be inconvenient but very difficult for the applicant to attend the court proceedings at Kurukshetra because there is nobody to look after the child in the absence of the applicant.

On the other hand, learned counsel for the respondent-husband submits that respondent is having a bonafide apprehension that relatives of the applicant may not cause any harm to his life.

Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, instant application deserves to be allowed, for the following more than one reasons.

It has gone undisputed on record that applicant-wife is residing with her parents. The minor child out of the wedlock is also residing with the applicant who is studying in 3rd standard in a school at Kaithal. When the respondent-husband moved a petition under Section 9 of the HM Act, the applicant-wife entered into a compromise and the said petition was withdrawn. However, the parties could not pull on together even after compromise. It is also not in dispute that applicant-wife is not having any regular source of income. It is her parents who are bearing the expenses for the education of her child. No amount of maintenance is being paid to the applicant-wife by the respondent-husband.

So far as alleged threat to his life, as expressed by the respondent-husband, is concerned, he would be always at liberty to seek appropriate remedy in accordance with law. So far as instant petition is concerned, all the relevant determinative factors are in favour of the applicant-wife. It would be very difficult for the applicant to attend the court proceedings at Kurukshetra, leaving behind her minor school going child. Neither she has any regular source of income, nor the respondent-husband is paying anything to her so far. Having said that, this Court feels no hesitation to conclude that it is just and expedient to order the transfer of the petition under Section 13 of the HM Act, filed by the respondent-husband, from Kurukshetra to Kaithal, so that the applicant-wife may not face any undue hardship, while pursuing the litigation imposed on her by the respondent-husband.

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 at Kurukshetra is directed to be transferred to the court of learned District Judge, Kaithal.

The learned District Judge, Kaithal, is also directed either to decide the case himself or assign it to a court of competent jurisdiction, for an early decision in accordance with law. Learned District Judge, Kurukshetra, is directed to send the record of the petition under Section 13 of the HM Act pending at Kurukshetra to the learned District Judge, Kaithal, 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.

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**

10.3.2016
AK Sharma