

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

Transfer Application No.350 of 2016

Date of Decision: January 19, 2017

Raina

...Applicant

Versus

Mohit Jaiswal

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

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, seeks transfer of petition under Section 9 of the Hindu Marriage Act, titled as **“*Mohit Jaiswal vs. Raina*”** filed by the respondent-husband, from Ludhiana to S.A.S.Nagar, Mohali.

Notice of motion was issued.

When service was complete and no body came present on behalf of the respondent, he was proceeded against ex parte, vide order dated 17.08.2016. Nobody has come present on behalf of the respondent to oppose the transfer application even today.

Heard learned counsel for the applicant.

It has gone undisputed before this Court that the applicant-wife along with her minor daughter is living at her parental house at S.A.S.Nagar, Mohali. Respondent-husband is not paying any amount of

maintenance either to the wife or to the child. Distance between Ludhiana and S.A.S.Nagar Mohali is more than 100 km. Since the applicant is not having any source of income, she is dependent on her parents.

Under these circumstances, interest of justice demands transfer of petition under Section 9 of the Hindu Marriage Act filed by the respondent-husband from Ludhiana to S.A.S.Nagar, Mohali, so as to secure ends of justice. Financial status of the wife, her source of income, responsibility for bringing up the children and distance between two places are some of the relevant considerations for transferring the matrimonial proceedings at the instance of the applicant-wife, as in the present case.

The abovesaid view 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.”

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 Court has also been followed by this Court in order dated 16.03.2016 passed 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.

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.

Consequently, learned District Judge, Ludhiana, is directed to send the complete record of the petition under Section 9 of the Hindu Marriage Act titled as “***Mohit Jaiswal vs. Raina***” to the learned District Judge, S.A.S.Nagar, Mohali, at an early date and in any case within a period of one month from the date of receipt of a certified copy of this order.

Learned District Judge, S.A.S.Nagar, Mohali, shall either decide the case himself or assign it to another Court of competent jurisdiction at S.A.S.Nagar, Mohali, for its early decision, in accordance with law.

With the above-said observations made and directions issued, instant transfer application stands allowed however, with no order as to costs.

January 19, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>