

TA No. 401 of 2016 (O&M)

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

TA No. 401 of 2016 (O&M)

Date of decision: 16.1.2017

Chetna Rani Gupta

.... Applicant

Vs.

Rajesh Kumar Gupta and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sandeep Bansal, Advocate
for the applicant.

Mr. Ashish Gupta, Advocate
for the respondents.

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 a petition under Section 25 and 26 of the Guardians and Wards Act, 1890 ('the Act' for short) from Patiala to Ludhiana.

Notice of motion was issued and further proceedings before learned trial court at Patiala, were stayed. Matter was referred to the Mediation and Conciliation Centre, however, the parties could not arrive at an amicable settlement.

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Heard learned counsel for the parties.

It is a matter of record that there is one child out of the wedlock and he is pursuing his studies at Ludhiana. Although applicant-wife is serving at Patiala, yet she is residing with her brothers at Ludhiana to look after her child. Respondent-husband is not paying any amount of maintenance either for the applicant-wife or for the child. Distance between Patiala and Ludhiana is more than 80 Kilometers.

Under the abovesaid undisputed fact situation obtaining in the present case, this Court is of the considered opinion that proceedings under Section 25 and 26 of the Act, initiated at the hands of the respondent-husband, deserve to be transferred from Patiala to Ludhiana, so as to secure the ends of justice. Denial of transfer of proceedings under Sections 25 and 26 of the Act from Patiala to Ludhiana, would amount to denial of justice to the applicant. It is so said, because financial status of the wife, her responsibility for bringing up the children 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

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(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,

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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 in TA No.945 of 2015 (Sushma and others Vs. Kapil @ Sahil Bansal) as well as order dated 12.4.2016 passed in TA No. 797 of 2015 (Jagroop Kaur Vs. Varinder Singh Bhela @ Tony), which, in turn, were 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 and the same is hereby allowed. Petition under Sections 25 and 26 of the Act filed by the respondent-husband is ordered to be transferred from Patiala to Ludhiana.

Accordingly, the learned District Judge, Patiala, is directed to send complete record of the petition under Section 25 and 26 of the Act,

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filed by the respondent-husband, to the learned District Judge, Ludhiana 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, Ludhiana, is also directed to assign the case 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.

All other pending miscellaneous applications also stand disposed of, accordingly.

(RAMESHWAR SINGH MALIK)
JUDGE

16.1.2017
AK Sharma