

TA No. 470 of 2016

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

**TA No. 470 of 2016
Date of decision: 6.2.2017**

Mamta

...Applicant

Versus

Naresh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Bindu Goel, Advocate
for the applicant.

Mr. Deepak Verma, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Applicant, by way of instant transfer application under Section 24 of the Code of Civil Procedure (for short 'CPC'), seeks transfer of the proceedings under Order 9 Rule 13 read with Section 151 CPC, seeking setting aside the ex parte decree dated 1.4.2013 and also seeks transfer of a petition under Section 25/29/8 of the Guardian and Wards Act, 1890, ('the Act' for short) from Patiala to Amritsar.

Notice of motion was issued.

Heard learned counsel for the parties.

Learned counsel for the applicant, at the very outset, fairly states that so far as first prayer regarding application under Order 9 Rule 13 CPC is concerned, same has been rendered infructuous, because said application has been decided by learned court below. Thus, instant transfer application survives only qua the second prayer, i.e. custody petition.

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It has gone undisputed between the parties that there is one minor child out of the wedlock and the applicant, along with her minor child, is staying with her parents at Amritsar. Respondent has already remarried and has a child from second marriage. Since applicant is not having any regular source of income, she is dependent on her parents. Distance between Patiala and Amritsar is 250 Kms.

After giving anxious consideration to the contentions and careful perusal of the record of the case, this Court is of the considered opinion that instant one has been found to be a fit case for ordering the transfer of petition under Section 25/29/8 of the Act from Patiala to Amritsar. It is so said, because all the abovesaid undisputed facts clearly go in favour of the applicant and against the respondent. In the circumstances of the case, it will not only be inconvenient but would be very difficult for the applicant-wife to go from Amritsar to Patiala, to pursue the litigation imposed on her by the respondent. Convenience of the wife in transfer applications, like the present one, arising out of a matrimonial dispute, is one of the relevant consideration. Further, distance between the two places, financial status of the wife, her source of income, her age as well as her responsibility for bringing up the minor children, are the relevant factors to be considered, while deciding the transfer applications like the present one.

The cardinal principle for exercise of power under Section 24 of the Civil Procedure Code is that the ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever the Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life

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antecedent to marriage and subsequent thereto and circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at by the Courts, while deciding a transfer application.

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.***

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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

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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 above-said law laid down by the Hon'ble Supreme has also been

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followed by this Court in order dated 16.03.2016 passed in TA No.945 of 2015 (Sushma and others Vs. Kapil @ Sahil Bansal) and 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.

Reverting to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as different High Courts, including this Court, it is unhesitatingly held that applicant-wife is entitled for getting the petition under Section 25/29/8 of the Act transferred from Patiala to Amritsar, so as to enable her to pursue the litigation without facing any undue hardship or harassment at the hands of the respondent. It is the settled principle of law that justice is not only to be done but it should also appear to have been done. If the applicant wife is forced to go from Amritsar to Patiala, it would amount to denial of justice to her. Thus, striking a balance between the parties with a view to do complete and substantial justice and proceeding on a holistic view of the matter, this Court is of the considered view that it would be just and expedient to transfer the petition under Section 25/29/8 of the Act from Patiala to 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 25/29/8 of the Act filed by the respondent husband is ordered to be transferred from Patiala to Amritsar.

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Accordingly, the learned District Judge, Patiala, is directed to send complete record of the above-said 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 to assign it to the learned court of competent jurisdiction, for an early decision, in accordance with law.

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

6.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No