

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 24.01.2017

1. TA No.518 of 2016

Pritima

... Applicant

Vs.

Usha Vohra

... Respondent

2. TA No.519 of 2016

Pritima

... Applicant

Vs.

Nitin Vohra

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. H.P.S. Ghuman, Advocate
for the applicant (in both cases).

Ms. Kamlesh, Advocate for
Mr. Parminder Singh, Advocate
for the respondent (in TA-518-2016).

Respondent in person (in TA-519-2016).

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical transfer applications filed by the applicant-wife are being disposed of vide this common order, as both these transfer applications have arisen out of similar set of facts.

Applicant-wife, by way of TA No.518 of 2016 seeks transfer of a petition under Section 25 of The Guardian and Wards Act, 1890 filed by her mother-in-law, seeking custody of minor child. This petition filed by the

respondent is being sought to be transferred from Sonapat to Panipat. In another transfer application bearing TA No.519 of 2016, applicant-wife also seeks transfer of a divorce petition filed by respondent-husband from Sonapat to Panipat.

Notice of motion was issued in both these transfer applications. Respondent-husband filed the reply in TA No.519 of 2016. However, no reply has been filed in TA No.518 of 2016.

Heard learned counsel for the applicant, learned counsel for the respondent in TA No.518 of 2016 and respondent-husband who is appearing in person in TA No.519 of 2016.

It is a matter of record that applicant-wife, along with her minor child, is living with her parents at Panipat. Respondent-husband is not paying any amount of maintenance either to the applicant-wife or for the minor child. Distance between Sonapat and Panipat is about 50 kilometers.

Under these undisputed facts and circumstances of the case, this Court feels no hesitation to conclude that it is just and expedient to transfer both the abovesaid litigations from Sonapat to Panipat, so as to secure the ends of justice. Denial of transfer of the abovesaid two litigations from Sonapat to Panipat would amount to denial of justice to the applicant. It is so said because applicant would be facing great hardship in going from Panipat to Sonapat to pursue the litigations imposed on her by the respondents in both these transfer applications.

After giving anxious consideration to the rival contentions and careful perusal of the record of the case, this Court is of the considered opinion that both these transfer applications have been found to be fit cases

ordering the transfer of the abovesaid petitions from Sonapat to Panipat. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicant-wife and against the respondent-husband. In the circumstances of the case, it will not only be inconvenient but would be very difficult for the applicant-wife to go from Panipat to Sonapat to pursue the litigations imposed on her by the respondents in both these cases. 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.

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 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 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 above-said 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) 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 abovesaid petitions transferred from Sonapat to Panipat, so as to enable her to pursue the litigations without facing any undue hardship or harassment at the hands of the respondents. 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 to Sonapat, it would amount to denial of justice to her. Thus, to strike 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 abovesaid petitions from Sonapat to Panipat.

No other argument was raised.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that both the transfer application deserve to be accepted and the same are hereby allowed. Petition under Section 25 of the Guardian and Wards Act, 1890 filed by mother-in-law of the applicant and divorce petition filed by the respondent-husband are ordered to be transferred from Sonapat to Panipat.

Accordingly, learned District Judge, Sonapat is directed to send complete record of the abovesaid both the petitions to the learned District

Judge, Panipat, 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.

Learned District Judge, Panipat is also directed to assign both the cases to the learned Court of competent jurisdiction, for an early decision, in accordance with law.

With the abovesaid observations made and directions issued, both the abovesaid transfer applications stand disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

24.01.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No