

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

TA No. 529 of 2016
Date of decision: 13.1.2017

Jasdeep Kaur

.... Applicant

Vs.

Bhupinder Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Manuj Nagrath, Advocate
for the applicant.

Mr. S.K.Monga, Advocate
for the respondent.

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 of divorce petition under Section 13 of the Hindu Marriage Act, 1955, ('HM Act' for short), filed by the respondent-husband, from Panchkula to Ludhiana.

Notice of motion was issued and in compliance thereof, respondent filed his written statement. Thereafter, the matter was referred to the Mediation and Conciliation Centre, but the parties could not arrive at an amicable settlement.

Heard learned counsel for the parties.

Learned counsel for the applicant-wife submits that applicant, alongwith her minor daughter, is living with her parents at Ludhiana. She is

serving at Ludhiana and her parents are senior citizens. Distance between Panchkula and Ludhiana is more than 100 Kms, thus, it would be very difficult for her to pursue the litigation imposed on her by respondent-husband, while coming to Panchkula from Ludhiana. He prays for allowing the present transfer application.

Per contra, learned counsel for the respondent-husband contended that applicant has not approached this Court with clean hands. She has also suppressed material facts from the notice of this Court. He submits that brother of the applicant-wife was also there in the family, but the said fact has been concealed by the applicant, with a view to mislead this Court. He places reliance on a judgment of the Hon'ble Supreme Court in **Anindita Das Vs. Srijit Das, 2006 (9) SCC 197**, to contend that the applicant-wife is not entitled for the relief being claimed by way of instant transfer application. He also refers to the report of the Mediator to submit that applicant-wife is bent upon to cause maximum harassment to the respondent-husband and did not show any interest in the mediation. He prays for dismissal of the present transfer application.

Having heard learned counsel for the parties at considerable length, after careful perusal of 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 totality of facts and circumstances of the case, present transfer application deserves to be accepted. To say so, reasons are more than one, which are being recorded hereinafter.

So far as observations made by Hon'ble the Supreme Court in **Anindita Das's case** (supra), are concerned, there is no dispute about the same. However, on close perusal of the cited judgment, the same has not

been found to be of any help to the respondent, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. "12....*Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or*

perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC

275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways

Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it
Ed. *See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."*

It has gone undisputed before this Court that applicant-wife, alongwith her minor child, is living with her parents at Ludhiana. It is also

not in dispute that applicant is serving at Ludhiana. Minor daughter of the parties is also studying at Ludhiana. Respondent-husband is not paying any amount of maintenance even for the minor daughter. Distance between Ludhiana and Panchkula is more than 100 kms.

In view of the abovesaid undisputed fact situation obtaining on record of the present case, it can be safely concluded that instant transfer application deserves to be allowed. It is so said, because distance between two places, family circumstances and convenience of the wife, are some of relevant factors for deciding the transfer applications like the present one. In fact, in the peculiar facts and circumstances of the case, it is just and expedient to transfer the divorce petition filed by the respondent from Panchkula to Ludhiana, so as to secure the ends of justice.

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 (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 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.

Another argument raised by learned counsel for the respondent that applicant has not approached this Court with clean hands and has concealed relevant facts from the notice of the Court has been found wholly misplaced and the same is only to be noted to be rejected. Mere presence of brother of the applicant-wife would not advance the case of the respondent-husband. Once the applicant-wife is serving at Ludhiana, coupled with the fact that her minor daughter is also going to school at Ludhiana, she would face great hardship if she is forced to go to Panchkula from Ludhiana for pursuing this litigation initiated by the respondent-husband.

Further, no difficulty or inconvenience has been pointed out on behalf of the respondent-husband in pursuing the litigation at Ludhiana. Under these circumstances, it is unhesitatingly held that applicant-wife has made out a case for transfer of divorce petition filed by the respondent-husband from Panchkula to Ludhiana.

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 is ordered to be transferred from Panchkula to Ludhiana.

Accordingly, the learned District Judge, Panchkula is directed to send complete record of the petition under Section 13 of HM Act bearing Case No. 196 of 2016 (Bhupinder Singh Vs. Jasdeep Kaur), 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 either to decide the case himself or assign it 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.

(RAMESHWAR SINGH MALIK)
JUDGE

13.1.2017
AK Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No