

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.628 of 2016

Date of decision: 15.02.2017

Dipti Jain

... Applicant

Vs.

Shishir Goel

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. J.S. Chahal, Advocate
for the applicant.

Mr. Sanjiv Gupta, 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 (for short 'CPC'), seeks transfer of the petition under Section 13 of the Hindu Marriage Act, 1955 ('the Act' for short) titled as Shishir Goel Vs. Deepti filed by respondent-husband from Panchkula to Yamuna Nagar.

Notice of motion was issued and the learned Court below was directed to adjourn the case beyond the date fixed before this Court.

Reply filed on behalf of the respondent-husband in the Court today, is taken on record and copy thereof has been supplied to learned counsel for the applicant.

Learned counsel for the respondent submits that the Court at Yamuna Nagar will have no jurisdiction to try and decide the litigation

between the parties, because the Court at Yamuna Nagar would be lacking territorial jurisdiction. However, this contention raised by learned counsel for the respondent has been found misplaced and is not worth acceptance.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the applicant-wife is living with her widowed mother at Jagadhri, District Yamuna Nagar. Since the applicant-wife is not working, she is dependent on her mother. Respondent-husband is not paying any amount of maintenance to the applicant-wife. Distance between Panchkula and Yamuna Nagar is about 90 kilometers. Other litigations between the parties, at the instance of the applicant-wife, are also pending at Yamuna Nagar.

In view of the abovesaid undisputed fact situation of the case, this Court feels no hesitation to conclude that it is just and expedient to transfer the petition under Section 13 of the Act from Panchkula to Yamuna Nagar. 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 Yamuna Nagar to Panchkula to pursue the litigation imposed on her by the respondent-husband under Section 13 of the Act. 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 child, 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 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**

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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) 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.

So far as the issue of jurisdiction raised by learned counsel for the respondent is concerned, it goes without saying that the moment this Court order transfer of the abovesaid petition under Section 13 of the Act, learned Court at Yamuna Nagar will have the jurisdiction to try the same. Identical issue fell for consideration before the Karnataka High Court in **M.V. Rekha's** case (supra) and after detailed deliberation on the issue of territorial jurisdiction and also following the law laid down by the Hon'ble Supreme Court as well as different High Courts, it was held as under:-

“8. Section 24 of the Civil Procedure Code provides for the general power of transfer and withdrawal of the suits, appeal or other proceedings. The relevant provision is sub-section (1)(b) of Section 24, which is as under:

"Section 24. General Power of transfer and withdrawal :

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage -

(a) xxx xxx xxx

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn."

9. The section confers general power to transfer, withdraw and transfer suits, appeals or other proceedings at any stage on the application of a party. The power of the High Court and District Judge are concurrent. The Court may also exercise the power suo motu. The section postulates that the Court to which the suit or appeal or other proceeding is transferred should be competent to try or dispose of the same. The contention of the learned

Counsel for the respondent is that the cause of action for filing of M.C. No.159/2009 has accrued at Mysore and that the Family Court at Bangalore is not competent to try the said case. In other words, the Family Court at Bangalore has no territorial jurisdiction to try the case. Therefore, the question for consideration is whether under Section 24 of the Civil Procedure Code, a case can be transferred from a Court where it was instituted and competent to try and has territorial jurisdiction to try the case, to some other Court, which does not have territorial jurisdiction. The cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. The point involved in this case is a pure question of law and its decision depends upon the construction of the words competent to try' occurring in Section 24(1) of the Civil Procedure Code.

*10. If the words contained in Section 24 are to be taken literally, it might be open to argument that the word competency' includes both pecuniary and territorial jurisdiction. It is necessary that the Court to which the case is transferred must have territorial jurisdiction, would make it impossible for a High Court to transfer a case pending in the Court of a District Judge to that of a District Judge of another District. Keeping this in mind, the Courts have interpreted words competent to try' occurring in Section 24(1) of the Civil Procedure Code referring only to pecuniary jurisdiction. In **Ram Das and another v. Habib***

*Ullah, AIR 1933 Allahabad 178, a Division Bench of the Allahabad High Court held that a Court is not competent to try and dispose of a suit if it does not possess both pecuniary and territorial jurisdiction to entertain it. This decision was rendered by the Division Bench on 16.4.1931. However, by a subsequent decision in **Kishore Lal v. Balkishan, AIR 1932 Allahabad 660. D/d. 16.6.1932**, Chief Justice Sulaiman gave reasons for reconsidering the previous view and holding that territorial jurisdiction does not come within the meaning of the words competent to try' occurring in Section 24 of the Civil Procedure Code and that they must refer only to pecuniary jurisdiction. This decision of the Allahabad High Court has been consistently followed by various High Courts. It is to be noted here that the territorial jurisdiction can be waived because it does not go to the root of the case whereas competence of the Court to try the case goes to the very root of the jurisdiction and refers to the inherent lack of jurisdiction by the Court. In this connection, it is relevant to note the observations of the Apex Court in **Hira Lal Patni v. Kalinath, AIR 1962 Supreme Court 199**, which is as under:*

"It is well settled that the objection as to the local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try case. The competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case

of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a Court can be waived."

This judgment of the Apex Court supports the view that the competence to try a case refers to the inherent jurisdiction to try and not for territorial jurisdiction.

11. A Full Bench of the Madras High Court in **P. Madhavan Unni v. M. Jayapandia Nadar**, AIR 1973 Madras 2, was considering a similar question. It has been held as under:

"Next, to restrict the meaning of the words competent to try or dispose of the same used in Section 24(1)(b)(ii), Civil Procedure Code to territorial jurisdiction over the property of the judgment debtor or the residence qualification of the judgment debtor would lead to grave anomalies and failure of justice. Thus, if the presiding officer of the executing Court happens to be the judgment debtor himself and owns the property in his jurisdiction which is being proceeded against, or if he has taken a prejudicial attitude to one party, and that is urged as a ground for transfer of the execution proceeding, it will be impossible to transfer the execution proceeding to any other subordinate Court, if the restricted meaning above sought to be given to the word competency is to be accepted. It appears to us that the word competency used in the above Section cannot be used to restrict the power

of the District Court or the High Court under Section 24, Civil Procedure Code to transfer the execution proceeding only to a Court which has territorial competency, or jurisdiction over the place where the judgment debtor resides or works for gain. It has to be given a sufficiently wide interpretation to include each and every Court within the jurisdiction of the superior Court, empowered to deal with such execution application. We respectfully agree with the above observation of the learned Judge. We consider that the power of transfer, under Section 24 of the Code of a suit, appeal or other proceedings, by a High Court or a District Court to a Court within their respective remedy and no fetters should be placed upon it on grounds of want of territorial jurisdiction of the transferee Court.

(Emphasis supplied by me)

12. A Division Bench of Rajasthan High Court in ***M/s. Maliram Nemichand Jain v. Rajasthan Financial Corporation and another, AIR 1974 Rajasthan 204*** has held that while interpreting the provision of law, the Court has to take into consideration all the circumstances and if by giving a narrow meaning to the word 'competent' in Section 24, an impossible situation is created, then the Court shall have to interpret the word in such a way that it may not create bottlenecks for the Court to function under certain circumstances. The Court further held that the District Judge presiding over the District Court of

Jaipur District was competent to deal with the execution proceedings in this case when they were duly transferred under the orders of the High Court.

*13. In **Mulraj Doshi v. Gangadhar Singhania, AIR 1982 Orissa 191**, the Orissa High Court has held that the words 'competent to try' included in Section 24 of the Civil Procedure Code refers to pecuniary jurisdiction and not territorial jurisdiction.*

14. It is clear from the above discussion that the words 'competent to try' included in Section 24(1) of the Civil Procedure Code does not refer to territorial jurisdiction. The High Court or the District Judge can transfer a case under this provision to a Court, which need not have territorial jurisdiction over the subject-matter of the litigation if the transferee Court is otherwise competent to try it. If that is so, there is no bar for this Court to transfer the case filed by the respondent seeking restitution of conjugal rights in M.C. No.159/2009 pending on the file of the Principal Family Court at Mysore to the Court of First Additional Family Judge, Bangalore.

15. The cardinal principle for exercise of power under Section 24 of the Civil Procedure Code is that ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever 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 thereon and the 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 while considering transfer. Further, when two proceedings in different Courts which raise common question of fact and law and when the decisions are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions (See **Smt. Nanda Kishori v. S.B. Shivaprakash, AIR 1993 Karnataka 87; Sumita Singh v. Kumar Sanjay & another, AIR 2002 Supreme Court 396 and Smt. Swarna Gouri Vs. Sri Vinayak Pujar, ILR 2007 Karnataka 4561).**”*

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 13 of the Act transferred from Panchkula to Yamuna Nagar, so as to enable her to pursue the litigation without facing any undue hardship or harassment at the hands of the respondent-husband. 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 Yamuna Nagar to Panchkula, 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 petition under Section 13 of the Act from Panchkula to Yamuna Nagar.

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 Act titled as Shishir Goel Vs. Deepti filed by the respondent-husband is ordered to be transferred from Panchkula to Yamuna Nagar.

Accordingly, the learned District Judge, Panchkula is directed to send complete record of the abovesaid petition to the learned District Judge, Yamuna Nagar, 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, Yamuna Nagar at Jagadhri 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

15.02.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No