

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision : 07.06.2017

(1) TA No. 673 of 2016

Dr. Anuradha YadavPetitioner

V/s

Dr. Amit GuptaRespondent

(2) TA No. 674 of 2016

Dr. Anuradha YadavPetitioner

V/s

Dr. Amit GuptaRespondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Aman Vashisht, Advocate for the petitioner(s).

Mr. Animesh Sharma, Advocate for the respondent(s).

RAJAN GUPTA J.

This order will dispose of aforesaid two transfer applications seeking transfer of proceedings pending at Amritsar to a court of coordinate jurisdiction at Gurgaon.

Petitioner and respondent got married on 21.04.1994. They are stated to have lived together for a period of six years at Saharanpur and Surat. No child was born out of this wedlock. It appears both were students of Government College, Surat while pursuing MBBS course. Petitioner claims that her parents were against the marriage but alliance was entered into due to love affair with the respondent. She alleges that she had taken a wrong decision. She was harassed and taunted for bringing less dowry. In

the year 1999, respondent, a pediatrician, went to U.K. for a job. Petitioner

had to stay in Gurgaon with her parents as she was not welcome in the matrimonial home. Later on, she also went to U.K. There differences arose between the couple. Petitioner claims that primary reason for this was that she was not able to conceive. She also alleges that her husband had developed a extra marital relation. Things came to such a pass that they wanted to dissolve their marriage by consent. They, thus approached the family court at Oxford. A detailed agreement was filed before said court. Same is annexed with this petition as annexure P2. Petition was disposed of by the court in U.K. and following order was passed :-

“AND BY CONSENT IT IS ORDERED that an Order be and is hereby granted in the terms of the said annexed Minute (as amended) and that it do stand as the Order of this Court.”

Aforesaid order was passed on the basis of consent given by the parties. Perusal of settlement shows that parties agreed that they would pursue divorce proceedings before the Indian courts. On coming back to India, petitioner filed petition under section 13(1) (ia) of the Hindu Marriage Act, 1955 titled as Anuradha Yadav vs. Amit Gupta at Gurgaon. However, she withdrew the same and filed again at Amritsar in view of certain jurisdictional issues. Respondent-husband also initiated certain litigation against his wife by filing two civil suits at Gurgaon. He also filed a petition under section 13(1) (ia) & (ib) of the Hindu Marriage Act, 1955 at Amritsar. Both the divorce petitions, one initiated by wife and another by husband, are pending at Amritsar. The wife has prayed that petition pending at Amritsar be transferred to a court of coordinate jurisdiction at Gurgaon as she normally lands at Indira Gandhi International Airport, New Delhi and it

Would be convenient to pursue the case at Gurgaon. Husband has made

prayer on similar lines. Admittedly, both of them are living in U.K. at present.

Learned counsel for the petitioner vehemently prayed that proceedings be transferred to Gurgaon as it would be convenient for both the parties. Prayer has not been opposed by learned counsel representing the respondent-husband.

I find plea of the parties untenable. Section 24 envisages a special power for transfer of proceedings in certain circumstances. Same has to be exercised keeping in view certain exigencies. While passing an order of transfer, jurisdictional issues would normally arise. As jurisdiction is specifically conferred by statute on certain courts, proceedings cannot be transferred merely on the asking of parties. Instant case is a unique case where both the parties are residing in U.K. They initially invoked the jurisdiction of court at U.K. for dissolution of their marriage. However, by their consent an order was passed by Judge of Family court at Oxford giving them liberty to pursue the matter in India. Initially petitioner-wife filed petition under section 13 at Gurgaon. However, in view of jurisdictional issues she withdrew the same and filed at Amritsar. Husband also filed his own petition in the court at Amritsar. It is inexplicable why parties did not seek divorce by way of mutual consent by invoking section 13-B of the Act. Both parties insist on proving their respective grounds for the purpose of decree of divorce. They also insist that they would choose the jurisdiction where they could pursue their respective petitions. In my considered view, this cannot be allowed. Parties cannot be given liberty to chose the forum where they would find it convenient to contest the litigation. It is for this

such circumstances/exigencies exist which demand that proceedings be transferred from one court to another court of coordinate jurisdiction in a different District. Discretionary power of transfer of cases cannot be imprisoned in a straitjacket or cast-iron formula applicable to all situations. It cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection (see *Kulwinder Kaur @ Kulwinder vs. Kandi Friends Education Trust & ors.* (2008) 3 SCC, 659). The facts and circumstances of this case show that petitioners wish to proceed with the matter according to their own wishes and choose the jurisdiction themselves. This court finds the prayer misconceived. There is no merit in the petitions. Same are hereby dismissed.

June 07, 2017

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No