

TA No. 801 of 2016

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

**TA No. 801 of 2016
Date of decision: 17.5.2017**

Vikas Singh

...Applicant

Versus

Rajni

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Deepak Bhardwaj, Advocate
for the applicant.

None for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Applicant-husband, 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 Rajni Vs. Vikas Singh, filed by respondent-wife from Pathankot to Chandigarh.

Notice of motion was issued and learned trial court was directed to adjourn the case beyond the date fixed before this Court. Thereafter, vide order dated 16.12.2016, matter was referred to the Mediation and Conciliation Centre of this Court. However, parties could not arrive at an amicable settlement, as per report dated 28.3.2017 submitted by the Mediator.

Neither anybody has come present on behalf of the respondent-

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wife to oppose this transfer application, nor any request for pass over has been made.

Heard learned counsel for the applicant-husband.

It has gone undisputed before this Court that applicant-husband as well as respondent-wife are working and residing at Chandigarh. Learned counsel for the applicant-husband has pointed out that petition under Section 9 of the Act, at the instance of applicant-husband, is also pending at Chandigarh. In this view of the matter, allowing the divorce petition filed by the respondent-wife at Pathankot would cause an avoidable harassment to both the parties, besides wasting money time and money. Thus, instant transfer application has been found to be a fit case for transfer of the divorce petition filed by the respondent-wife from Pathankot to Chandigarh, so as secure the ends of justice.

The view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in ***Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4***. The relevant observations made by the Hon'ble Supreme Court in ***Dr. Subramaniam Swamy's case*** (supra), which can be gainfully followed in the present case, read 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)”

Reverting to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court, it is unhesitatingly held that since both the parties are working and residing at Chandigarh, it would be in their interest to transfer the divorce petition, filed by the respondent-wife, from Pathankot to Chandigarh, so as to enable both the parties to pursue the litigation without facing any undue hardship or harassment. It is the settled principle of law that justice is not only to be done but it should also appear to have been done. 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 13 of the Act from Pathankot to Chandigarh.

No other argument was raised.

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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 filed by the respondent-wife is ordered to be transferred from Pathankot to Chandigarh.

Accordingly, the learned District Judge, Pathankot, is directed to send complete record of the above-said petition to the learned District Judge, Chandigarh, 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, Chandigarh, 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.

Parties through their counsel are directed to appear before the learned court at Chandigarh, on 5.7.2017.

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

17.5.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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