

TA No. 935 of 2016

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

**TA No. 935 of 2016
Date of decision: 16.2.2017**

Apurva

...Applicant

Versus

Navtej Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. H.C.Arora, Advocate
for the applicant.

Mr. Himanshu Rai, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Applicant, 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 25 of the Guardian and Wards Act ('the Act' for short) titled as Dr. Apurva Nalwa Vs. Dr. Navtej Singh Nalwa, from Hisar to Bathinda.

Notice of motion was issued.

Heard learned counsel for the parties.

It has gone undisputed before this Court that applicant-wife is living with her parents at Amritsar. However, she is seeking transfer of her petition for custody of the minor child from Hisar to Bathinda, so that it may not be unduly harsh to the respondent-husband, because Bathinda would fall midway between Hisar and Amritsar. Further, this Court has already passed

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order dated 17.5.2016 in TA Nos. 272 and 306 of 2015, transferring two litigations between these very parties from Hisar to Bathinda.

After giving anxious consideration to the contentions raised and careful perusal of the record of the case, this Court is of the considered opinion that instant one has been found to be a fit case for ordering the transfer of petition under Section 25 of the Act from Hisar to Bathinda. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicant-wife and against the respondent-husband.

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 **Dr. Subramaniam Swamy** (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

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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)”

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 litigation, learned court at Bathinda 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

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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

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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,

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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**).

So far as the judgments of this Court in Pardeep Kalia Vs. Dev Krishan passed in TA No. 354 of 2015 on 21.3.2016 and Parveen Vs. Dipti passed in TA No. 249 of 2016 on 5.4.2016, relied upon by the learned counsel for the respondent, are concerned, there is no dispute about the observations made therein. However, on a close perusal of the cited judgments, the same have 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

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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.**

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 25 of the Act transferred from Hisar to Bathinda, 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. 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 25 of the Act from Hisar to Bathinda.

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 25 of the Act filed by the respondent husband is ordered to be transferred from Hisar to Bathinda.

Accordingly, the learned District Judge, Hisar, is directed to send complete record of the above-said petition to the learned District Judge, Bathinda, at an early date but in any case within a period of one month from

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the date of receipt of certified copy of this order.

The learned District Judge, Bathinda, is directed to assign the case to the learned court of competent jurisdiction, for an early decision, in accordance with law.

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

16.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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