

TA No. 588 of 2015

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

**TA No. 588 of 2015 (O&M)
Date of decision: 10.5.2017**

Kuldeep Kaur

...Applicant

Versus

Mandeep Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.G.S. Nahel, Advocate
for the applicant.

Ms. Pooja Chopra, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

CM No. 10454-CII-2017

Applicant-respondent No.2 seeks permission to place on record
reply.

Application is allowed, as prayed for. Reply is permitted to be
placed on record.

CM stands disposed of.

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Applicant, by way of instant transfer application under Section
24 of the Code of Civil Procedure (for short 'CPC'), seeks transfer of the
civil suit under Section 33 Rule 1 of CPC titled as 'Kuldeep Kaur Vs.
Mandeep Singh and another' from Nabha, District Patiala to Amloh, District
Fatehgarh Sahib.

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Notice of motion was issued.

Heard learned counsel for the parties. Reply has been filed.

Learned counsel for respondent No.2 submits that respondent No.1 is living abroad. Respondents No.1 and 2 are brother and sister.

It has gone undisputed before this court that the applicant, along with her minor child, is staying with her parents at Amloh, District Fatehgarh Sahib. Respondent-husband is not paying any amount of maintenance either for the applicant or for the minor child. Since applicant-wife is not having any regular source of income, she is dependent on her parents. Distance between place of residence of the applicant and Amloh, District Fatehgarh Sahib is about 45 Kms.

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 transfer of the abovesaid civil suit from Nabha, District Patiala to Amloh, District Fatehgarh Sahib. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicant and against the respondent. In the circumstances of the case, it will not only be inconvenient but would be very difficult for the applicant to go from Amloh, District Fatehgarh Sahib to Nabha, District Patiala, to pursue the litigation. 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 children 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

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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. Savitri Vs. Hari Chand, AIR 1999 SC 55***
- 4. Neelam Kanwar Vs. Devinder Singh Kanwar, 2000 (10) SCC 589.***
- 5. Sumita Singh Vs. Kumar Sanjay and another, AIR 2002 (SC) 396.***
- 6. Rachna Kanodia Vs. Anuk Kanodia, 2002 (1) MLJ 86***
- 7. Archana Singh Vs. Alok Partap Singh, 2002 (2) MLJ 568***
- 8. Mangla Patil Kale Vs. Sanjeev Kumar Kale, 2003 (10) SCC 280.***
- 9. Fatema Vs. Jafri Syed Husain @ Syed Parvez Jafferi, AIR 2009 (SC) 1773.***
- 10. Anjali Ashok Sadhwani Vs. Ashok Kishinchand***

Sadhwani, AIR 2009 (SC) 1374.

11. Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others, AIR 2008 SC 1333.

12. Nisha Vs. Dharmenda Pratap Singh Rathore, 2015 (3) All. LJ 168.

13. M.V. Rekha Vs. Sathya, 2011 (2) HLR 34.

14. Sneha Vs. Vinayak, 2013 ILR (Karnataka) 165.

15. Rimpal Vs. Balinder Kumar, 2010 (7) RCR (Civil) 286.

16. Anju Vs. Sanjay, 2011 (6) RCR (Civil) 112.

17. 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 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 as well as different High Courts, including this Court, it is unhesitatingly held that applicant is entitled for getting the abovesaid civil suit transferred from Nabha, District Patiala to Amloh, District Fatehgarh Sahib, so as to enable her 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. If the applicant is forced to go from Amloh, District Fatehgarh Sahib to Nabha, District Patiala, 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 abovesaid civil suit from Nabha, District Patiala to Amloh, District Fatehgarh Sahib.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

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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. The abovesaid civil suit filed by the respondent husband is ordered to be transferred from Nabha, District Patiala to Amloh, District Fatehgarh Sahib.

Accordingly, the learned District Judge, Patiala, is directed to send complete record of the abovesaid civil suit to the learned District Judge, District Fatehgarh Sahib, 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, Fatehgarh Sahib, is also directed to assign the case to the learned court of competent jurisdiction at Amloh, for an early decision, in accordance with law.

Parties through their counsel are directed to appear before the learned court at District Fatehgarh Sahib, on 4.7.2017.

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

10.5.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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