

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.114 of 2017 (O&M)
Date of decision: 21.04.2017

Rekha Jain

... Applicant

Vs.

Saurabh Jain

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. B.R. Gupta, Advocate
for the applicant.

Mr. Sandeep Gahlawat, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

CM-8711-CII-2017

Applicant-respondent seeks permission to place on record reply
on behalf of the respondent.

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

CM stands disposed of.

TA-114-2017

Applicant-wife, by way of instant transfer application under
Section 24 of the Code of Civil Procedure (for short 'CPC'), seeks transfer of a
petition under Section 13 of the Hindu Marriage Act, 1955 ('the Act' for short)
titled as Saurabh Jain Vs. Smt. Rekha Jain filed by the respondent-husband
from Jhajjar to Bhiwani.

Notice of motion was issued and in the meantime, further proceedings before the learned Court at Jhajjar were stayed. Reply on behalf of the respondent has been filed.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the applicant-wife is living with her father at Bhiwani. Her father is a handicapped person. Distance between Jhajjar and Bhiwani is about 75 kilometers.

Learned counsel for the respondent, while placing reliance on a judgment of the Hon'ble Supreme Court in **Anindita Das Vs. Srijit Das, 2006 (9) SCC 197**, vehemently opposed the present transfer application, contending that it is not a fit case for transfer of the petition under Section 13 of the Act from Jhajjar to Bhiwani.

Having considered the contention raised by learned counsel for the respondent, the same has been found wholly misplaced and has not been found worth acceptance.

So far as the judgment relied upon by learned counsel for the respondent is concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgment, it has not been found of any help to the respondent, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundrao 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.

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 Jhajjar to Bhiwani. 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 Bhiwani to Jhajjar 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 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 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.

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 Jhajjar to Bhiwani, 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 Bhiwani to Jhajjar, 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 Jhajjar to Bhiwani.

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 Saurabh Jain Vs. Smt. Rekha Jain filed by the respondent-husband is ordered to be transferred from Jhajjar to Bhiwani.

Accordingly, the learned District Judge, Jhajjar is directed to send complete record of the abovesaid petition to the learned District Judge, Bhiwani 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, Bhiwani 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

21.04.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No