

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 12.05.2017

1. TA No.212 of 2017

Manpreet Kaur

... Applicant

Vs.

Gurdeep Singh

... Respondent

2. TA No.218 of 2017

Manpreet Kaur

... Applicant

Vs.

Yashpal Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Piyush Kant Jain, Advocate
for the applicant (in both cases).

Mr. Parvinder Singh, Advocate
for the respondent (in TA-212-2017).

Mr. Sarju Puri, Advocate
for the respondent (in TA-218-2017).

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical transfer applications bearing TA No.212 of 2017 (Manpreet Kaur Vs. Gurdeep Singh) and TA No.218 of 2017 (Manpreet Kaur Vs. Yashpal Singh), are being decided vide this common order, with the consent of learned counsel for the parties. However, for the facility of reference, facts are being culled out from TA No.212 of 2017 (Manpreet Kaur

Vs. Gurdeep Singh).

Applicant, by way of these two transfer applications under Section 24 read with Section 151 of the Code of Civil Procedure (for short 'CPC'), seeks transfer of petition under Section 13 of the Hindu Marriage Act, 1955 ('the Act' for short) titled as Gurdeep Singh Vs. Manpreet Kaur filed by the respondent-husband and Civil Suit titled as Yashpal Singh Vs. Manpreet Kaur filed by her father-in-law from Shaheed Bhagat Singh Nagar (Nawanshahr) to Ludhiana.

Notice of motion was issued and in the meantime, learned Court below was directed to adjourn the case beyond the date fixed before this Court.

Replies filed on behalf of the respondents in both these transfer applications in the Court today, are taken on record and copies thereof have been supplied to learned counsel for the applicant.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the applicant-wife, along with her minor child, is living with her parents at Ludhiana. Since the applicant-wife is not working, she is dependent on her widowed mother, as her father had already expired. Neither the respondent-husband in TA No.212 of 2017 nor her father-in-law in TA No.218 of 2017 are paying any amount of maintenance either for the applicant-wife or for the minor child. Distance between Ludhiana and Nawanshahr is about 50 kilometers. Other litigations between the parties, at the instance of the applicant, are also pending at Ludhiana.

The contentions raised by learned counsel for the respondents

vehemently opposing both the transfer applications have been duly considered, but the same have been found wholly misplaced. Parameters of law laid down by the Hon'ble Supreme Court in **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others, 2008 (1) RCR (Civil) 821**, relied upon by learned counsel for the respondents have not been found of any help to the respondents. In fact, in view of the totality of facts and circumstances of the case, the law laid down by the Hon'ble Supreme Court in **Kulwinder Kaur @ Kulwinder Gurcharan Singh's** case (supra) goes in favour of the applicant-wife in TA No.212 of 2017 and daughter-in-law in TA No.218 of 2017.

So far as the judgment in **Kulwinder Kaur @ Kulwinder Gurcharan Singh's** case (supra), relied upon by learned counsel for the respondent is concerned, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgment, it has not been found of any help to the respondents, 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**.

With a view to avoid repetition and also for the sake of brevity,

the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647)

and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's

theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972

(2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of

obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

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 both the abovesaid cases from Shaheed Bhagat Singh Nagar (Nawanshahr) to Ludhiana. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicant and against the respondents. In the circumstances of the case, it will not only be inconvenient but would be very difficult for the applicant to go from Ludhiana to Shaheed Bhagat Singh Nagar (Nawanshahr) to pursue the litigations imposed on her by the respondents. 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. *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. *Archna 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 Jafferri*, 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

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 is entitled for getting both the abovesaid cases transferred from Shaheed Bhagat Singh Nagar (Nawanshahr) to Ludhiana, so as to enable her to pursue the litigation without facing any undue hardship or harassment at the hands of the respondents. 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 Ludhiana to Shaheed Bhagat Singh Nagar (Nawanshahr), 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 both the abovesaid cases from Shaheed Bhagat Singh Nagar (Nawanshahr) to Ludhiana.

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 both the transfer applications deserve to be accepted and the same are hereby allowed. Petition under Section 13 of the Act titled as Gurdeep Singh Vs. Manpreet Kaur and Civil Suit titled as Yashpal Singh Vs. Manpreet Kaur are ordered to be transferred from Shaheed Bhagat Singh Nagar (Nawanshahr) to Ludhiana.

Accordingly, the learned District Judge, Shaheed Bhagat Singh Nagar (Nawanshahr) is directed to send complete record of both the abovesaid cases to the learned District Judge, Ludhiana 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, Ludhiana is also directed to assign both the cases to the learned Court of competent jurisdiction, for their early decision, in accordance with law.

Parties through their counsel are directed to appear before the learned Court at Ludhiana on 03.07.2017.

With the abovesaid observations made and directions issued, both the abovesaid transfer applications stand disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

12.05.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No