IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

TA No.233 of 2017
Date of decision: 05.05.2017

Anju Sharma @ Anju Talwar

... Applicant

Vs.

Davinder Sharma and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. V.K. Kaushal, Advocate for
Mr. Prashant Vashisth, Advocate
for the applicant.

Mr. B.D. Sharma, Advocate
for respondents No.1 & 3.

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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 a petition under Section 12 of the Hindu Marriage Act, 1955 ('the Act' for short) titled as Davinder Sharma Vs. Anju Sharma @ Anju Talwar as well as Civil Suit for permanent injunction titled as Dharam Pal and another Vs. Anju Sharma @ Anju Talwar from Amritsar to Hoshiarpur.

Notice of motion was issued.

Reply filed on behalf of the respondents filed in the Court today, is taken on record and copy thereof has 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 is

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living with her parents at her parental village in District Hoshiarpur. Since the applicant is not working, she is dependent on her parents. Respondent-husband is not paying any amount of maintenance to the applicant-wife. Distance between Amritsar and Hoshiarpur is about 150 kilometers. A Civil Suit has also been filed by mother-in-law of the applicant, at the instance of her husband.

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 Amritsar to Hoshiarpur. 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 Hoshiarpur to Amritsar 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

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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 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.***

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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*

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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*

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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 Amritsar to Hoshiarpur, 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 Hoshiarpur to Amritsar, 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 Amritsar to Hoshiarpur.

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

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considered view that instant transfer application deserves to be accepted and the same is hereby allowed. Petition under Section 12 of the Act titled as Davinder Sharma Vs. Anju Sharma @ Anju Talwar as well as Civil Suit for permanent injunction titled as Dharam Pal and another Vs. Anju Sharma @ Anju Talwar are ordered to be transferred from Amritsar to Hoshiarpur.

Accordingly, the learned District Judge, Amritsar is directed to send complete record of both the abovesaid cases to the learned District Judge, Hoshiarpur 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, Hoshiarpur is also directed either to decide the petition under Section 12 of the Act himself or assign it to the learned Court of competent jurisdiction. He is further directed to assign the abovesaid civil suit 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 Hoshiarpur on 03.06.2017.

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

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Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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