

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.77 of 2017

Date of decision: 29.03.2017

Manoj Kumar

... Applicant

Vs.

Preeti Walia

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Bhupinder Ghai, Advocate
for the applicant.

Mr. A.K. Sharma, Advocate
for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

Applicant-husband, by way of instant transfer application under Section 24 of the Code of Civil Procedure (for short 'CPC'), seeks transfer of a divorce petition titled as Preeti Walia Vs. Manoj Kumar filed by respondent-wife from Patiala to Chandigarh.

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.

Reply filed on behalf of the respondent-wife in the Court today, is taken on record and copy thereof has been supplied to learned counsel for the applicant-husband.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the respondent-wife is serving in a private concern at Chandigarh. There is no child out of this marriage. In this view of the undisputed fact situation, it would be in the

interest of respondent-wife herself, if her divorce petition is ordered to be transferred from Patiala to Chandigarh, so as to avoid unwarranted harassment to both the parties.

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 abovesaid petition from Patiala to Chandigarh. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicant and against the respondent.

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.

The view taken by this Court also finds support from a judgment of the Hon'ble Supreme Court in **Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4**. The relevant observations made by the Hon'ble Supreme Court in **Dr. Subramaniam Swamy's** case (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 in **Dr. Subramaniam Swamy's** case (supra), it is unhesitatingly held that applicant is entitled for getting the abovesaid petition transferred from Patiala to Chandigarh, so as to avoid unwarranted harassment to both the parties. 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, 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 petition from Patiala to Chandigarh.

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. Divorce petition titled as Preeti Walia Vs. Manoj Kumar filed by the respondent-wife is ordered to be transferred from Patiala to Chandigarh.

Accordingly, the learned District Judge, Patiala is directed to send complete record of the abovesaid petition to the learned District Judge, Chandigarh 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, Chandigarh 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

29.03.2017
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No