IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

T.A. No. 378 of 2019
DATE OF DECISION :- October 24, 2019

Jyoti Chauhan **...Applicant**

Versus

Vivek Sood **...Respondent**

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Sandeep Kumar, Advocate for the applicant.

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Applicant Jyoti Chauhan, aged about 34 years, wife of Vivek Sood-respondent, by way of filing the instant application seeks transfer of petition under Section 13 of the Hindu Marriage Act filed by her husband Vivek Sood against her having title 'Vivek Sood Vs. Jyoti Chauhan' pending in the Court of District and Sessions Judge, Kapurthala to the Court of competent jurisdiction at Ludhiana as well as application under Order 9 Rule 13 C.P.C. filed by her for setting aside ex-parte decree dated 5.1.2018 whereby the petition filed by respondent under Section 9 of the Hindu Marriage Act was decreed pending before Civil Judge (Sr. Division), Kapurthala to the Court of competent jurisdiction at Ludhiana.

According to the applicant, she has been thrown out of the matrimonial home after giving beatings by her husband. She is residing separately at Ludhiana. Four cases are pending between the parties in the Courts at Ludhiana. It is difficult for her to travel from Ludhiana to Kapurthala, therefore, the application be accepted.

Notice of the application was given to the respondent, who as per office report has been duly served but he has not turned up to offer a contest.

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I have heard learned counsel for the applicant besides going through the record.

As far as transfer of divorce petition is concerned, in view of circumstances explained in the application, the request has got merit whereas with regard to transfer of application under Order 9 Rule 13 C.P.C for setting aside ex-parte judgment and decree dated 5.1.2018, the same cannot be accepted since only the Court which has passed ex-parte judgment and decree has only the jurisdiction to decide such type of application.

Therefore, the application under Section 13 of the Hindu Marriage Act with regard to divorce petition titled 'Vivek Sood Vs. Jyoti Chauhan' is ordered to be withdrawn from the Court of District and Sessions Judge, Kapurthala and transferred to Family Court at Ludhiana for disposal in accordance with law, whereas the request is declined as far as application under Order 9 Rule 13 C.P.C is concerned with the observations that if the application is not accepted and ex-parte judgment and decree are not set aside then the applicant may approach the Court again seeking transfer of that application in accordance with law. In that way, the present application is allowed partly.

The parties through their counsel are directed to appear in the transferee Court on 25.11.2019. Copies of orders be sent to the Court of District and Sessions Judge, Kapurthala as well as to the Family Court at Ludhiana for information and necessary compliance.

(H.S. MADAAN)
JUDGE

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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

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