

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

TA-1097-2018 (O&M)

Date of decision: 04.04.2019

Ritu

...Applicant

Versus

Sandeep Kumar

...Respondent

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

Present: Mr. Sanjay Jain, Advocate for the applicant.

Mr. B.S. Dhillon, Advocate for the respondent.

H.S. MADAAN, J. (Oral)

CM-7882-CII-2019

This is an application for placing on record the reply on behalf of the respondent along with documents Annexure R-1 to R-6.

Heard. Allowed, subject to all just exceptions. Documents be taken on record.

Main Case

By way of moving the present application, applicant Ritu, aged about 29 years, estranged wife of respondent Sandeep Kumar, presently residing with her parents at Ambala City, on account of differences between the spouses, seeks transfer of divorce petition filed by her husband, the respondent against her having title 'Sandeep Kumar Vs. Ritu' pending in the Court of Addl. District Judge,

Kurukshetra to the Court of competent jurisdiction at Ambala.

According to the applicant, the marriage solemnized between the parties ran into rough weather. Resultantly, the applicant along with minor son of the parties, namely Ashwani Sodhi, aged about 06 years, who is mentally challenged, had to leave the matrimonial home and start residing with her parents at Ambala City. The applicant has attached supporting documents including the disability certificate of minor son of the parties showing that he is 100% disabled; According to the applicant she does not have any source of income, as such, she has filed a petition under Section 125 Cr.P.C. and another petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 as well as a complaint under Sections 406 and 498-A of IPC against the respondent and his family members at Ambala City. Just to pressurize the applicant, the respondent has filed the divorce petition against the applicant in a Court at Kurukshetra. The applicant having no source of income, required to take care of minor son of the parties, who is mentally challenged and who requires constant care and cannot be left alone at any given moment of time, it is difficult for her to travel from Ambala City to Kurukshetra to attend the dates of hearing in Court there. Therefore, the present application be accepted.

Notice of the application was given to the respondent, who has put in appearance and filed written reply, contesting the application vehemently, contending therein that the distance between Ambala City

and Kurukshetra is only 40 kms, which can easily be traversed by the applicant. The respondent has to look after his ailing parents and mentally retarded sister. The behaviour of the applicant towards respondent and his family members during her stay at the matrimonial home, was rude and cruel. Mamta, sister of the respondent, aged about 35 years is 100% mentally challenged. Under the circumstances, the respondent cannot leave his ailing parents and mentally challenged sister alone and go to Ambala City to attend the dates of hearing in Court there. As such, the application be dismissed being without any merit. The respondent has also attached copies of medical documents to show that his parents are unwell and his sister is mentally challenged. He has attached some photographs in that regard also.

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

The reasons given in the application for transfer by the applicant and as argued by learned counsel for the applicant clearly outweigh the reasons given by the respondent in the written reply and comparatively inconvenience to the applicant shall be much more, in case this application is declined, than to the respondent, if the same is allowed.

The Apex Court in various judgments has observed that in matrimonial disputes between the spouses convenience of wife should be looked into. In that regard a reference can be made to authority

Sumita Singh Versus Kumar Sanjay and another, 2002 AIR(SC) 396

by a Division Bench of Hon'ble Supreme Court.

In **Bhartiben Ravibhai Rav** Versus **Ravibhai Govindbhai Rav**, 2017(3) RCR(Civil) 369, the Apex Court had allowed application for transfer of the divorce petition to a place where the wife was residing considering various factors including the distance between the place where the wife was residing and the place of sitting of the Court where divorce petition had been instituted and the fact that the wife had filed two cases against her husband in the Court at the place of her residence wherein the respondent had already put in appearance.

In **Apurva** Versus **Navtej Singh**, 2017(2) Law Herald 966 by a Co-ordinate Bench of this Court, it was observed that wherever the Courts are called upon to consider the plea of transfer in matrimonial disputes, the Courts have to take into consideration various factors like economic soundness of either of the parties, the social strata of the spouses to which they belong and behavioural pattern, standard of life antecedents of marriage. Generally it is the wife's convenience, which must be looked at by the Courts while deciding the transfer application.

Keeping in view the contentions in the application and submissions made by learned counsel for the applicant, in which I find merit, in absence of any strong circumstance to the contrary, it would be proper and appropriate, if the application is accepted. The same is accordingly allowed. The petition in question is ordered to be

withdrawn from the Court of Addl. District Judge, Kurukshetra and transferred to Family Court at Ambala for disposal in accordance with law.

The parties through their counsel are directed to appear in the transferee Court on 02.05.2019. Copies of orders be sent to both the Courts for information and necessary compliance.

04.04.2019
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No