

T.A. No. 751 of 2018 and
T.A. No. 753 of 2018

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

T.A. No. 751 of 2018
DATE OF DECISION :- March 18, 2019

Anjna

...Applicant

Versus

Vijay Kumar

...Respondent

T.A. No. 753 of 2018

Anjna

...Applicant

Versus

Vijay Kumar

...Respondent

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

Present:- Mr. Amardeep Singh Mann, Advocate for the applicant.

Mr. J.K. Singla, Advocate for the respondent.

My this order shall dispose of two applications bearing T.A.
No. 751 of 2018 and T.A. No. 753 of 2018.

Applicant Anjna, aged about 30 years, estranged wife of Vijay
Kumar-respondent presently residing with her parents at Bareta, District
Mansa, by way of filing the present application seeks transfer of petition
under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights

filed by her husband Vijay Kumar against her having title 'Vijay Kumar Vs. Anjna' pending in the Court of Additional Civil Judge (Sr. Division), Phul, District Bathinda to the Court of competent jurisdiction at Budhlada, District Mansa.

By way filing another application she seeks transfer of petition under Section 25 of the Guardians and Wards Act seeking custody of minor son of the parties, aged about 3 years residing with the applicant, pending in the Court of Additional Civil Judge (Sr. Division), Phul, District Bathinda to the Court of competent jurisdiction at Budhlada, District Mansa.

According to the applicant, the marriage between the parties was performed on 20.9.2015 at Mansa. After the marriage the spouses started residing together. The marriage was consummated. The applicant gave birth to a male child from loins of respondent. The marriage between the parties ran into rough weather. The applicant along with the minor son had to leave the matrimonial home and start residing with her parents at Bareta, District Mansa. According to the applicant, she is working as Technical Officer in MARKFED posted at Mansa. In view of such posting and the fact that she is taking care of minor son of the parties, it is difficult for her to travel from Bareta, District Mansa to Bathinda covering a distance of about 200 kms on one side so as to attend the dates of hearing there. She has filed a petition under Section 125 Cr.P.C. in the Court of CJM Mansa where respondent has put in appearance, as such the applications be accepted and cases be transferred as prayed for.

Notice of the application was given to the respondent, who put

in appearance through counsel and is opposing the applications vehemently contending that applicant is holding such post where frequent travelling is required, therefore, she can very well travel to Bathinda to attend the dates of hearing there and no ground is made to accept the applications, therefore, those be dismissed.

Section 9 of the Guardians and Wards Act provides that only the Court having jurisdiction over the place where the minor ordinarily resides has got jurisdiction to entertain and try petition for custody of the minor filed by either of the parents or other eligible persons. The child is stated to be residing with the applicant at Bareta, District Mansa, therefore, the Court having jurisdiction over that place can entertain and try the petition. As regards petition under Section 9 of the Hindu Marriage Act, the applicant has pleaded that she is a young woman, who is posted at Mansa taking care of minor son of the parties, as such it is difficult for her to go to Bathinda to attend the dates of hearing in the Court there. Though counsel for the respondent has contended that since applicant is a working woman, she can very well come to Bathinda to attend the dates of hearing at that place but as clarified by learned counsel for the applicant, the applicant has to do the touring for only two months in a year and for remaining ten months she is to attend her office at Mansa.

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

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 Additional Civil Judge (Sr. Division), Phul, District Bathinda and

transferred to the Court of District Judge, Mansa for disposal in accordance with law. Learned District Judge, Mansa may retain the petition on his board or assign it to any other Court of competent jurisdiction.

The parties through their counsel are directed to appear in the transferee Court on 24.4.2019. Copies of orders be sent to the Court of Additional Civil Judge (Sr. Division), Phul, District Bathinda as well as to the Court of District Judge, Mansa for information and necessary compliance.

(H.S. MADAAN)
JUDGE

March 18, 2019
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No