

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

TA-951-2018 (O&M)

Date of decision: 09.04.2019

Nisha Gupta

...Applicant

Versus

Nitin Gupta and others

...Respondents

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

Present: Mr. Achin Gupta, Advocate for the applicant.

Mr. Rakesh Gupta, Advocate for respondent No.8.

H.S. MADAAN, J. (Oral)

By way of moving the present application, applicant Nisha Gupta, aged about 32 years, estranged wife of respondent No.1 Nitin Gupta, presently residing with her parents at Faridkot, seeks transfer of civil suit, filed by her husband-respondent No.1 against her and seven others, having title 'Nitin Gupta Vs. Nisha Gupta and others' pending in the Court of Civil Judge (Jr. Divn.) Patiala, to the Court of competent jurisdiction at Faridkot.

According to the applicant, the marriage solemnized between her and respondent No.1 on 01.02.2008 at Patiala did not work, though, the couple was blessed with a daughter, namely, Baby Mysha, who was aged about 09 years at the time of filing of application; that circumstances were so created by respondent No.1 and his family members that the applicant along with minor daughter of the parties had

to leave the matrimonial home and start residing with her parents at Faridkot. The applicant has filed a petition under Section 125 Cr.P.C., seeking maintenance for herself as well as minor daughter against respondent No.1, which is pending before the Family Court, Faridkot. Respondent No.1 had filed a petition under Section 9 of the Hindu Marriage Act in a Court at Patiala against the applicant just to harass her. The applicant had approached this Court by moving Transfer Application No.333 of 2018 which was accepted and the said petition was transferred to a Court at Faridkot. Now respondent No.1 has filed a civil suit against her and others. The applicant having no source of income, taking care of minor daughter of the parties, it is difficult for her to travel from her parental place to Patiala, to attend the dates of hearing in the Court there, covering a distance of about 200 kms on on side. Therefore, the present application be accepted, more particularly when two cases between the applicant and her husband/respondent No.1 are already pending in Courts at Faridkot.

Notice of the application was given to the respondents, however, only respondent No.8, put in appearance to offer a contest, whereas, issuance of notice to respondent Nos.4 and 6 was dispensed with and remaining respondent Nos.1, 2, 3, 5 and 7 were served but did not appear to offer a contest.

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

Nitin Gupta, respondent No.1 who is plaintiff in the civil suit

has not opted to appear and offer a contest, despite receiving notice of the application. Only respondent No.8-Principal, the British Co-Ed High School, Sangaur Road, Patiala has appeared through counsel. It is stated that such respondent has been wrongly arrayed as defendant in the civil suit and the civil suit if transferred to Faridkot, such respondent shall be put to inconvenience. However, when the comparative inconvenience is seen, the scale is definitely tilted in favour of the applicant, if the application is disallowed than in favour of respondent No.8, if it is allowed. Such respondent through counsel can easily move an application before the transferee Court for striking of his/her name as defendant being an unnecessary party.

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 Ray** Versus **Ravibhai Govindbhai Ray**, 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 Civil Judge (Jr. Divn.) Patiala and transferred to the Court of learned District Judge, Faridkot for disposal in accordance with law. Learned District Judge, Faridkot 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 07.05.2019. Copies of orders be sent to both the Courts for information and necessary compliance.

09.04.2019

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(H.S. MADAAN)
JUDGE

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