

Sr. No.228

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

**TA No.140 of 2020 (O&M)
Date of Decision: 04.03.2020**

Mamta Devi

... Applicant

Versus

Rajesh Jangra and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sanchit Punia, Advocate,
for the applicant.

Mr. J.P.Sharma, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

1. Applicant-wife seeks transfer of civil suit filed by the respondent-husband for permanent injunction restraining the applicant/defendant from taking the custody of minor daughter Harshika from the respondents bearing case No.CS/1587/2019 titled as "Rajesh Jangra Vs. Smt. Mamta Devi and another" pending in the Court of learned Civil Judge, Senior Division, Kurukshetra to the Court of competent jurisdiction at Hisar.

2. Learned counsel for the applicant submits that petition under Section 125 Cr.P.C. seeking grant of maintenance and petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 against the respondent-husband filed by the applicant-wife are already pending at Hisar.

3. Learned counsel for the applicant further submits that applicant/petitioner is residing at Hisar. The distance between

Kurukshetra and Hisar is about 190 kms. One minor son born out of

the wedlock is residing with the applicant-wife, who needs constant care and attention of the mother. She cannot leave him behind to attend the Court proceedings. Therefore, it is difficult for her to go to Kurukshetra on each date of hearing.

4. Learned counsel for the respondent appears and opposes the transfer application.

5. I have heard learned counsel as well as the parties, who are present in person and have gone through the record of the case.

6. All the cases pending between the parties are aftermath of matrimonial discord. Keeping in view the contentions in the application and the conceded position that petition under Section 125 Cr.P.C. seeking grant of maintenance and petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 are already pending at Hisar it would be proper, appropriate and in the interest of justice if all the cases are tried and decided at one place.

7. Reference may also be had to the observations made by Hon'ble the Supreme Court of India in cases titled as "***Sumita Singh Vs. Kumar Sanjay and another***", ***AIR 2002 SC 396*** and ***Rajni Kishor Pardeshi v. Kishor Babulal Pardeshi***" ***2005 (12) SCC 237***, wherein in matrimonial matters, convenience of wife is to be preferred over the convenience of husband.

8. Even otherwise, the ethos as manifested under Article 51-A of Constitution of India also envisage that it shall be fundamental duty of every citizen of India to uphold the dignity of woman. In addition, per Article 15 (3), power has also been conferred on the State to make special provisions for women and children.

9. It was perhaps in this spirit that an amendment was

inserted by Act 50 of 2003 with effect from 23.12.2003 in Hindu Marriage Act, 1955, whereby, in case of a wife being the petitioner, jurisdiction was conferred to the Court within local limits of whose ordinary original civil jurisdiction, the wife is residing on the date of presentation of the petition. In fact the very statement of objects and reasons of the Bill whereby Clause (iiia) was inserted in Section 19 (i) of HMA, by way of marriage laws (Amendment Act 2003) states as below :

“The Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 provide that a petition for relief under the provisions of these Acts shall be presented to the District Court within the limits of whose original civil jurisdiction the marriage was solemnized or the respondent, at the time of the presentation of the petition, resided or the parties to the marriage last resided together or the petitioner was residing at the time of the presentation of the petition, in a case where the respondent was at the time residing outside the territories to which these Acts extended or had not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive. However, these provisions are not considered adequate or fair as far the women are concerned. Under the existing provisions, a petition cannot be filed by the aggrieved wife to the District Court within the local limits of whose ordinary jurisdiction she may be residing. In view thereof, the Government has decided to amend the provisions of these Acts so that the wife can also file petition in the District Court within local limits of whose jurisdiction she may be residing.”

10. After the aforesaid amendment, husband can only institute proceedings, either where marriage was solemnized or where the wife is residing or where the parties last resided together.

Only in a case where wife is residing outside India, the husband can institute proceedings where he is residing. Whereas, wife can file a petition on the additional ground of her being resident within the local limits of the competent Court. The said right has been exclusively conferred on a wife so as to keep her convenience in mind in the matrimonial matters.

11. In the premise, present application is allowed. The petition in question pending before the Court of learned Civil Judge, Senior Division, Kurukshetra is ordered to be withdrawn from that Court and is transferred to the District Judge, Hisar for its disposal in accordance with law by the Court concerned.

12. However, keeping in view the fact that applicant-wife is not earning and she had to come to attend hearing pursuant to order passed by this Court, the respondent-husband is directed to pay her travel and incidental expenses @ Rs.5000/-. In case, he does not pay the same, the concerned Court is directed to ensure that there is total compliance of the order.

04.03.2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No