

Sr. No.205

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

TA-596-2019

Date of Decision: 18.02.2020

DIVYA

... Applicant

Versus

VISHAL

...Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms.Manjari Joshi, Advocate for
Mr.Rajiv Joshi, Advocate
for the applicant.

None for the respondent.

ARUN MONGA, J.(ORAL)

1. Applicant-wife seeks transfer of petition under Section 9 of the Hindu Marriage Act, 1955 filed by the respondent-husband bearing HMA No.343 of 2019 titled as "Vishal v/s Divya" pending in the Court of Addl. Civil Judge (Sr. Divn), Phagwara, Distt. Kapurthala, to the Court of competent jurisdiction at Yamuna Nagar.

2. Learned counsel for the applicant-wife submits that one complaint between the parties is pending at Yamuna Nagar.

3. Learned counsel for the applicant further submits that petitioner is residing at Yamuna Nagar with her parents. One minor daughter born out of the wedlock is in the custody of applicant-wife. She has no source of income and it is very difficult for her to attend hearings at Phagwara which is approximately 210 kms from Yamuna Nagar.

4. Despite service, none has put in appearance on behalf

of the respondent. It seems that respondent-husband is deemed to have consented the present transfer application by not contesting the same.

5. I have heard learned counsel for the applicant and have gone through the record of the case.

6. The case pending between the parties are aftermath of matrimonial discord. Keeping in view the contentions in the application and the conceded position that the distance is more than 210 kms and also the respondent no appeared to object the petition despite service, it would be proper, appropriate and in the interest of justice, if the present case is transferred to Yamuna Nagar.

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 Addl. Civil Judge (Sr. Divn.) Phagwara, Kapurthala is ordered to be withdrawn from that Court and is transferred to the District Judge, Yamuna Nagar for its disposal in accordance with law by the Court concerned.

18.02.2020

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**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No