

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

**T.A NO. 767 OF 2019
DATE OF DECISION : 20.02.2020**

Parwati Devi

...Applicant

versus

Naresh Kumar

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Nisha, Advocate,
for the applicant.

None for the respondent.

ARUN MONGA, J. (ORAL)

The present petition has been filed by the applicant-wife seeking transfer of petitions filed by her husband under Section 9 of the Hindu Marriage Act, 1955, (hereinafter referred to as "HMA") titled as "Naresh Kumar v. Parwati Devi" from the Court of Principal Judge, Family Court, Sirsa to any other Court of competent jurisdiction at Abohar, District Fazilka.

2. Learned counsel for the applicant submits that a complaint under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V.Act"), filed by the applicant-wife, is pending in the Court at Abohar.

3. Learned counsel for the applicant further submits that applicant is residing with her parent at Abohar. One minor daughter born out of the wedlock is in the custody of applicant who requires constant care and attention and cannot be left alone. She has no source of income. It is very difficult for her to travel from Abohar, District Fazilka to Sirsa, on each and every date of hearing.

4. Despite service, no one has put in appearance on behalf of the respondent. Hence, this Court is of the view that 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 records of the case.

6. The cases pending between the parties are aftermath of matrimonial discord. Keeping in view the averments contained in the application and the conceded position that one petition under Section 12 of D.V. Act, instituted at the instance of applicant-wife, is already pending in the Court at Abohar, 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 Principal Judge, Family Court, Sirsa is ordered to be withdrawn from that Court and is transferred to District Judge, Fazilka, for its disposal in accordance with law by the Court at Abohar.

(ARUN MONGA)
JUDGE

FEBRUARY 20, 2020
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| 1. | Whether speaking/reasoned : | Yes/No |
| 2. | Whether reportable : | Yes/No |