

Sr. No.223

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

TA-784-2019

Date of Decision: 12.02.2020

BENHUR

... Applicant

Versus

ASHTIMAN KUMAR

...Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr.Vineet Sharma, Advocate
for the applicant.

None for the respondent.

ARUN MONGA, J.(ORAL)

1. Applicant-wife seeks transfer of petition under Section 32 read with Section 33 of the Indian Divorce Act, 1869 filed by the respondent-husband titled as “Ashtiman Kumar v/s Benhur” pending in the Court of Additional Civil Judge (Senior Division), Dasuya, Distt Hoshiarpur to the Court of competent jurisdiction at Amritsar.

2. Learned counsel for the applicant submits that petitioner is residing at Amritsar. One minor son aged 9 months 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 Hoshiarpur which is approximately 110 kms from Amritsar.

3. None has put in appearance despite service on behalf of the respondent. It seems that respondent-husband is deemed to have consented the present transfer application by not contesting

the same.

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

5. The petition pending between the parties is aftermath of matrimonial discord.

6. 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.

7. 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.

8. 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.”

9. 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.

10. Keeping in view the contentions in the application, the

same is allowed. The petition in question pending before the Court of Additional Civil Judge (Senior Division), Dasuya, Hoshiarpur is ordered to be withdrawn from that Court and is transferred to the District Judge, Amritsar for its disposal in accordance with law by the Court concerned.

12.02.2020
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No