

**Sr. No.207
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**TA No.841 of 2019 (O&M)
Date of Decision: 04.03.2020**

Preeti

... Applicant

Versus

Ashish

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Deepak Vashishth, Advocate,
for the applicant.

Mr. Surinder Gaur, Advocate,
for the respondent.

ARUN MONGA, J.(ORAL)

1. Applicant-wife seeks transfer of petition filed by the respondent-husband under Section 13 (1) (i) and (ia) of the Hindu Marriage Act, 1955 bearing No. DMC/179/2019 titled as “Ashish Vs. Preeti” pending in the Court of learned District Judge, Family Court, Sonapat to the Court of competent jurisdiction at Jind.

2. Learned counsel for the applicant submits that complaint in Women Cell against the respondent-husband filed by the applicant-wife is already pending at Jind.

3. Learned counsel for the applicant further submits that applicant is residing at Jind with her old age parents. She has no source of income. The distance between Sonapat and Jind is about 85 kms. Therefore, it is difficult for her to go to Sonapat on each date of hearing.

4. Learned counsel for the respondent appears and

opposes the transfer application on the ground that distance between the Family Court and the residence of the applicant is merely 45 kms. and that apart both minor children are also in the custody of the respondent-husband.

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

6. The cases pending between the parties is aftermath of matrimonial discord.

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 District Judge, Family Court, Sonapat is ordered to be withdrawn from that Court and is transferred to the District Judge, Jind for its disposal in accordance with law by the Court concerned.

CM No.4908-CII of 2020

As the main transfer application stands allowed, the application under Section 151 C.P.C. for modification in the order dated 12.02.2020, passed by this Court is rendered infructuous.

Civil Miscellaneous Application is disposed of as infructuous.

04.03.2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No