

Sr. No.206

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

**TA No.879 of 2019 (O&M)
Date of Decision: 03.03.2020**

Prem Lata

... Applicant

Versus

Lalit Kumar

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ramneek Vasudeva, Advocate,
for the applicant.

None for the respondent.

ARUN MONGA, J.(ORAL)

1. Applicant-wife seeks transfer of petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 bearing HMA No.331 of 2019 titled as “Lalit Kumar Vs. Prem Lata” pending in the Court of learned District Judge, Family Court, Pathankot to the Court of competent jurisdiction at District Rupnagar.

2. Learned counsel for the applicant submits that applicant/petitioner is residing at Rupnagar with her old age mother. She has no source of income. The distance between Rupnagar and Pathankot is about 190 kms. One minor daughter born out of the wedlock is in the custody of applicant-wife and is school going, who needs constant care and attention of the mother. She cannot leave her behind to attend the Court proceedings. Therefore, it is difficult for her to go to Pathankot on each date of hearing.

3. Notice of the transfer application was received back from the address given in the memo of parties in the petition filed under Section 13 of the Hindu Marriage Act, 1955 by the respondent husband stating that he does not live on the said address any more. In the premise, this Court had passed an order dated 10.12.2019, let the notice be served on the respondent through learned counsel representing him before the Family Court, where he has preferred the petition under Section 13, *ibid*.

4. Service report reveals that said notice has been served on the learned counsel representing the respondent and yet he has chosen not to appear. In the premise, this Court is of the view that respondent husband has deemingly 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 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, Pathankot is ordered to be withdrawn from that Court and is transferred to the District Judge, Rupnagar for its disposal in accordance with law by the Court concerned.

(ARUN MONGA)
JUDGE

03.03.2020

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No