

202 (2 cases)

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

**TA-411 of 2020 (O&M)
Date of Decision: 12.03.2021**

Garima Singh

...Applicant/petitioner

Vs.

Kulwant Sheoran

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr.Dilraj Singh Bhinder, Advocate,
For the applicant.

Mr. Ajit Singh Lamba, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Applicant-wife seeks transfer of petition under Section 13 of Hindu Marriage Act filed by the respondent-husband bearing case No. DMC 357 of 2020 titled as “Kulwant Sheoran Vs. Garima Singh” pending in the Court of Learned Principal Judge, Family Court, Bhiwani, to the Court of competent jurisdiction at Mohali.

2. Learned counsel for the applicant submits that applicant is currently residing in her parental home at Mohali. The distance from Mohali to Bhiwani is more than 250Kms. He further submits that father of the applicant is heart patient. She has two brothers, who are married and residing separately from her parents. There is no male member, who would accompany her to attend hearing at Bhiwani. Therefore, it is difficult for her to go to Bhiwani.

3. Learned counsel for the respondent-husband joins the proceedings and opposes the transfer petition. He strenuously argues that applicant-petitioner has sufficient means and can easily appear.

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

5. Learned counsel for applicant relies on judgments titled as ***“Sumita Singh Vs. Kumar Sanjay and another”, AIR 2002 SC 396 and Rajni Kishor Pardeshi v. Kishor Babu lal Pardeshi” 2005 (12) SCC 237,*** wherein Supreme Court has observed that in matrimonial matters, convenience of wife is to be preferred than that of husband.

6. Even otherwise, the ethos as manifested under Article 51-A of Constitution of India also envisages that it shall be fundamental duty of every citizen of India to uphold the dignity of women. In addition, per Article 15 (3), power has also been conferred on the State to make special provisions for women and children.

7. 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 also 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 as 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.”

8. 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 in any case file a petition in a competent court within whose local limits, she is residing. The said right has been exclusively conferred on a wife so as to keep her convenience in mind in the matrimonial matters.

9. In the premise, without going into the allegations/counter allegations, the present transfer application is allowed. The petition in question pending before the Court of Learned Principal Judge, Family Court, Bhiwani, is ordered to be withdrawn from that Court and is transferred to the District Judge, Mohali for its disposal in accordance with law by the Court concerned.

March 12, 2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No