

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

TA-436-2020 (O&M)
Date of Decision: 10.02.2021

Kiran Saini	Vs.	...Applicant
Vineet Saini		...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr.Rakesh Dhiman, Advocate,
for the applicant.

None for the respondent.
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

Applicant-wife seeks transfer of petition under Section 13 of Hindu Marriage Act filed by the respondent-husband bearing HMA No. 345 of 2020 titled as “Vineet Saini Vs. Kiran Saini” pending in the Court of Learned District Judge, Ambala, to the Court of competent jurisdiction at Gurugram.

2. Learned counsel for the applicant submits that application for revival of the case under Domestic Violence Act registered at the instance of the applicant/petitioner against the respondent-husband is already pending before the learned Family Court at Gurugram.

3. Learned counsel for the applicant submits that petitioner is currently residing in a parental home at Gurugram. The distance from Ambala to Gurugram is about 250 Kms. He further submits that father of the applicant is suffering/recovering from paralytic attack due to which he is unable to walk properly. She has two brothers, who are married and reside separately from the parents. They are not on talking terms with her. There is

no male member, who is able to accompany her. Therefore, it is difficult for her to go to Ambala to attend court hearings.

4. Despite service, none has put in appearance on behalf of the respondent. In the premise, this Court is of the view that respondent-husband has deemingly consented to the present transfer application by not contesting the same.

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

6. Both the cases pending between the parties are aftermath of matrimonial discord. Keeping in view the contentions in the application and the conceded position that application for revival of case under Domestic Violence Act is already pending before the learned Family Court, Gurugram, it would be proper, appropriate and in the interest of justice if both cases are tried and decided at one place.

7. Reference may also be had to “*Sumita Singh Vs. Kumar Sanjay and another*”, *AIR 2002 SC 396* and *Rajni Kishor Pardeshi v. Kishor BabulalPardeshi*” *2005 (12) SCC 237*, wherein Supreme Court has observed that 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, without going into the allegations/counter allegations, the present transfer application is allowed. The petition in question pending before the Court of Learned District Judge, Ambala, is ordered to be withdrawn from that Court and is transferred to the District Judge, Gurugram for its disposal in accordance with law by the Court concerned.

February 10, 2021
vandana

(ARUN MONGA)
JUDGE

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