

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

TA No.62 of 2022 (O&M)
Date of decision: 17.08.2022

Pooja

....Petitioner

Versus

Vikas

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Rajni, Advocate
for the petitioner.

Mr. Amandeep Singh Samra, Advocate
for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for transfer of the petition filed under Section 13(1)(ia) of the Hindu Marriage Act, pending in the Family Court, Hisar to the competent Court of jurisdiction at Bhiwani.

Vide order dated 17.02.2022, the following order was passed:-

“Applicant-wife has filed the application for seeking transfer of the divorce petition, filed at the instance of respondent-husband, pending in the Family Court, Hisar, to the Court of competent jurisdiction at Bhiwani.

It is submitted by learned counsel for the applicant that at present the applicant is staying with her parents at Bhiwani, which is at a distance of about 70 kilometers from Hisar. The applicant has also filed a complaint before S.P., Bhiwani, for registration of case against the respondent, which is pending enquiry. The applicant has also filed a petition under Section 125 Cr.P.C. in the Family Court, Bhiwani and a complaint has also been filed at her behest under Section 12 of the Protection of Women from Domestic Violence Act, as well as petition under Section 9 of the Hindu Marriage Act, which are pending in the Family Court, Bhiwani. In these

circumstances, a prayer is made for the transfer of the petition filed at the behest of the respondent to the Court of competent jurisdiction at Bhiwani.

Notice of motion for 10.05.2022.”

Counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner has filed a petition under Section 125 Cr.P.C. and a petition/complaint under the Domestic Violence Act and petition under Section 9 of the Hindu Marriage Act at Bhiwani.

Counsel for the petitioner has further submitted that the respondent/husband has filed the petition under Section 13(1)(ia) of the Hindu Marriage Act, as a counter-blast, before the Principal Judge, Family Court, Hisar.

Counsel for the petitioner has also argued that on account of a petition filed by the respondent/husband, the petitioner is facing great difficulty in prosecuting the said case as there is a distance of about 70 Kms from Bhiwani to Hisar.

Counsel for the petitioner has relied upon the judgments **“Sumita Singh vs Kumar Sanjay”**, 2002 SC 396 and **“Rajani Kishor Pardeshi vs Kishor Babulal Pardeshi”**, 2005(12) SCC 237, wherein the Hon’ble Supreme Court has observed that *while deciding the transfer application, the Courts are required to give more weightage and consideration to the convenience of the female litigants and transfer of legal proceedings from one Court to another should ordinarily be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships.”*

Counsel for the petitioner has also relied upon the

judgment “*N.C.V. Aishwarya vs A.S. Saravana Karthik Sha*,” 2022

Live Law (SC) 627, wherein the Hon’ble Supreme Court has observed as under:-

9. The cardinal principle for exercise of power under section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.”

It is well settled that while considering the transfer of a matrimonial dispute/case at the instance of the wife, the Court is to consider the family condition of the wife, the custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important the convenience of the wife i.e. she cannot travel alone without assistance of a male member of her family, connectivity of the place to and fro from her place of residence as well as bearing of the litigation charges and travelling expenses.

Counsel for the respondent has, however, not disputed the factual position but opposed the submissions made by counsel for the

petitioner.

After hearing the counsel for the parties, considering the fact that the petitioner/wife will have to bear the litigation expenses and transportation expenses and in view of the judgments i.e. ***Sumita Singh's case (supra)***, ***Rajani Kishor Pardeshi's case (supra)*** and ***N.C.V. Aishwarya's case (supra)*** passed by the Hon'ble Supreme Court, this Court deem it appropriate to allow the present petition, subject to the following conditions:-

- 1. The petition filed under Section 13(1)(ia) of the Hindu Marriage Act, pending before the Family Court, Hisar will be transferred to the competent Court of jurisdiction at Bhiwani.*
- 2. The District Judge, Bhiwani, will assign the said petition to the competent Court of jurisdiction.*
- 3. The Family Court, Hisar is directed to transfer all the record pertaining to the aforesaid case to District Judge, Bhiwani.*
- 4. The parties are directed to appear before the trial Court, Bhiwani, within a period of 01 month from today.*

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

17.08.2022

yakub

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No