

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

TA No.88 of 2022 (O&M)
Date of decision: 06.09.2022

Rajwinder Kaur

....Petitioner

Versus

Sukhdev Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saurabh Kaushik, Advocate
for the petitioner.

Mr. Shvetanshu Goel, Advocate
for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

CM-11181-CII-2022

Heard.

Allowed as prayed for.

Documents (Annexures P-2 and P-3) are taken on record
subject to all just exceptions.

TA-88-2022 (O&M)

Prayer in this petition is for transfer of the petition filed
under Section 13(1)(i-a) of the Hindu Marriage Act, pending in the
Family Court, Camp Court Payal, District Ludhiana to the competent
Court of jurisdiction at Patiala.

Vide order dated 04.02.2022, the following order was
passed:-

*“Applicant-wife has filed the transfer application
for seeking transfer of the petition filed under Section 13
(1) (i-a) of the Hindu Marriage Act, at the instance of
respondent-husband, presently pending in the Family*

Court, Camp Court, Payal to the Court of competent jurisdiction at Patiala.

It is now submitted by learned counsel for the applicant that two minor daughters born from the wedlock of the applicant and the respondent are presently residing with the applicant at her parental place, which is situated at village Galwatti, Tehsil Nabha, District Patiala. It is further submitted that the respondent is not paying any maintenance to the applicant as well as the children. The applicant has already filed petition under Section 125 Cr.P.C. and complaint under Sections 12, 17, 19, 20, 22 and 31 of Protection of Women from Domestic Violence Act, 2005, which are already pending at Nabha. The distance between Nabha and Payal, Ludhiana is about 70 kilometers. As such, it is difficult for her to pursue the litigation thrust upon her at the instance of her husband.

Notice of motion for 15.03.2022.”

Counsel for the petitioner has argued that on account of a matrimonial discord, the respondent/husband has filed the petition under Section 13(1)(i-a) of the Hindu Marriage Act, as a counter-blast, before the Principal Judge, Family Court, Camp Court Payal, District Ludhiana.

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 Patiala to Camp Court Payal, District Ludhiana.

Counsel for the petitioner has further contended that the petitioner is having two minor children, who are living in her care and custody and she is facing difficulty to defend the case as she has to travel from Patiala to Camp Court Payal, District Ludhiana.

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.

Reply on behalf of the respondent is filed and the only objection taken in the reply is that the respondent/husband is facing threat to his life and liberty in case the petition is transferred from Camp Court Payal, District Ludhiana to competent Court of jurisdiction at Patiala.

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)(i-a) of the Hindu Marriage Act, pending before the Family Court, Camp Court Payal, District Ludhiana will be transferred to the*

competent Court of jurisdiction at Patiala.

- 2. The District Judge, Patiala, will assign the said petition to the competent Court of jurisdiction.*
- 3. The Family Court, Camp Court Payal, District Ludhiana is directed to transfer all the record pertaining to the aforesaid case to District Judge, Patiala.*
- 4. The parties are directed to appear before the trial Court, Patiala, within a period of 01 month from today.*
- 5. The Family Court, Patiala will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.*
- 6. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.*

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

06.09.2022

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