

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 17.08.2022

1. TA-108-2020 (O&M)

Sumit

....Petitioner

Vs.

Neha

....Respondent

2. TA-283-2020 (O&M)

Neha

....Petitioner

Vs.

Sumit

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Govind Chauhan, Advocate
for the petitioner (in TA-108-2020) and
for the respondent (in TA-283-2020).

Mr. Parminder Singh, Advocate
for the petitioner (in TA-283-2020) and
for the respondent (in TA-108-2020).

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in TA-108-2020, filed by petitioner-husband Sumit, is

for transfer of the petition under Section 25 of the Guardians and Wards Act (for short 'GW Act'), seeking custody of minor son namely Arsh, who is living in care and custody of respondent-wife Neha, pending before the Family Court, Ambala to the competent Court of jurisdiction at Karnal.

Prayer in TA-283-2020, filed by petitioner-wife Neha, is for transfer of the petition filed by the respondent-husband under Section 10 of Hindu Marriage Act (for short 'HM Act'), pending before the Family Court, Karnal to the competent Court of jurisdiction at Ambala.

Learned counsel for petitioner Neha has argued that it is own case of respondent Sumit in the petition under Section 10 of HM Act that she is suffering from psychological problems and is also suffering from seizures problem, due to which she requires urgent medical treatment and she can have fits at any time, therefore, it is medically advised that the petitioner should not travel from Ambala to Karnal to attend the Court proceedings. It is further submitted that on account of matrimonial discord, petitioner-wife Neha filed a petition under Section 125 Cr.P.C., a complaint under the Protection of Women from Domestic Violence Act and an FIR under Sections 406 & 498-A IPC at Ambala.

Learned counsel 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 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.”

Learned counsel has further relied upon **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, 2022 Live Law (SC) 627**, wherein the Hon’ble Supreme Court held as under: -

“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.

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.”

Learned counsel for petitioner Sumit submits that in terms of

Section 9 of GW Act, jurisdiction would lie with the Court, where the minor child is residing, therefore, the petition should be transferred from Ambala to Karnal.

However, the fact remains that respondent-mother Neha, in TA-108-2020, is not maintaining good health, as noticed above and has already initiated three proceedings at Ambala, therefore, bar under Section 9 of GW Act would not apply in the present case, as she will not be in a position to defend the case at Karnal.

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 family condition of the wife, custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important, 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.

After hearing the counsel for the parties, considering the fact that petitioner Neha, in TA-283-2020, will have to bear the litigation expenses and transportation expenses and in view of the judgments in **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 and also considering her health condition, as noticed above, this Court deem it appropriate to allow the petition i.e. TA-283-2020 filed by petitioner-wife

Neha, subject to the following conditions:-

- 1. The petition filed under Section 10 of the Hindu Marriage Act, pending before the Family Court, Karnal will be transferred to the competent Court of jurisdiction at Ambala.*
- 2. The District Judge, Ambala will assign the said petition to the competent Court of jurisdiction.*
- 3. The Family Court, Karnal is directed to transfer all the record pertaining to the aforesaid case to District Judge, Ambala.*
- 4. The parties are directed to appear before the Family Court, Ambala within a period of 01 month from today.*

In view of the above, TA-108-2020, filed by petitioner-husband Sumit praying for transfer of petition under Section 25 of GW Act, seeking custody of minor child namely Arsh, filed by petitioner-wife (in TA-283-2020), is dismissed.

A photocopy of this order be placed on file of connected case.

[ARVIND SINGH SANGWAN]
JUDGE

17.08.2022

vishnu

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No