

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

**TA No.126 of 2022 (O&M)
Date of decision: 30.08.2022**

Neha Bhardwaj and others

....Petitioners

Versus

Nishant Saini

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Kotla, Advocate
for the petitioners.

None for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for transfer of the petition filed under Section 9 of the Hindu Marriage Act, pending in the Family Court, Faridabad to the competent Court of jurisdiction at Gurugram.

Vide order dated 10.02.2022, the following order was passed:-

“Learned counsel contends that FIR No.709 dated 27.10.2017 under Section 346, 363, 366, 354-D and 376 of IPC was registered at Civil Lines, Gurugram against the respondent but he was acquitted by the learned trial Court, however, appeal in respect thereto is pending. Learned Counsel contends that a petition under Section 12 (1) Hindu Marriage Act has been filed by petitioner No.1 at Gurugram for annulment of the alleged marriage and the same is pending before the learned Family Court at Gurugram. Learned Counsel further contends that petitioner No.3 who is grand-father of petitioner No.1 is suffering from cancer and there is no other able person to look after petitioner No.3, therefore, in the circumstances it is not possible for petitioner No.1 to travel to Faridabad where the respondent has on extraneous considerations and as a counter blast filed a petition under Section 9 of the Hindu Marriage Act. Learned Counsel contends that in

the circumstances the petition under Section 9 of the Hindu Marriage Act is liable to be transferred before the Court of competent jurisdiction at Gurugram.

Notice of motion for 30.05.2022.

Notice regarding stay as well.

Liberty to effect service on the respondent through the counsel representing him before the learned trial Court.”

Counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner has filed a petition under Section 12(1) of the Hindu Marriage Act at Gurugram.

Counsel for the petitioner has further submitted that the respondent/husband has filed the petition under Section 9 of the Hindu Marriage Act, as a counter-blast, before the Principal Judge, Family Court, Faridabad.

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 45 Kms from Gurugram to Faridabad.

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.

As per the office report, the respondent has been served,

however, there is no representation on his behalf.

After hearing the counsel for the petitioner, 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 9 of the Hindu Marriage Act, pending before the Family Court, Faridabad will be transferred to the competent Court of jurisdiction at Gurugram.*
2. *The District Judge, Gurugram, will assign the said petition to the competent Court of jurisdiction.*
3. *The Family Court, Faridabad is directed to transfer all the record pertaining to the aforesaid case to District Judge, Gurugram.*
4. *The parties are directed to appear before the trial Court, Gurugram, within a period of 01 month from today.*
5. *The Family Court, Gurugram 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

30.08.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No