

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

TA-128-2022 (O&M)
Date of decision: 18.07.2022

Bindu Sharma

...Petitioner

Versus

Sushil Malhotra

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. C. S. Rana, Advocate
for the applicant-petitioner.

None for the respondent, despite service.

ARVIND SINGH SANGWAN, J. (Oral)

CM-8481-CII-2022

Allowed as prayed for.

Documents are taken on record as Annexures P-2 and P-3.

Main case

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled as ***Sushil Malhotra vs. Bindu Shurma***, pending in the Court of the Principal Judge, Family Court, Kapurthala to the competent Court of jurisdiction at Ludhiana.

On 17.02.2022, while issuing notice of motion, the following order was passed:

“Applicant-wife has filed the application for seeking transfer of the petition filed under Section 13 of the Hindu Marriage Act, at the instance of respondent-husband, pending in the Family Court, Kapurthala, to the Court of competent jurisdiction at Ludhiana.

It is submitted at the behest of the applicant that

the applicant at present is residing with her parents in Ludhiana. She had one brother, who had since expired. The applicant is stated to have no source of earning. Even, the distance between her place of residence and the Courts at Kapurthala is about 98 kilometers. As such, it is difficult for her to pursue the litigation imposed upon her at the behest of her husband.

Notice of motion for 16.05.2022.

Learned Trial Court shall adjourn the case beyond the date fixed by this Court.”

Learned 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. as well as a petition under Section 12 of the Domestic Violence Act at Ludhiana and as a counter-blast to the said caess filed by the petitioner-wife, the respondent-husband has filed the present petition under Section 13 of the Hindu Marriage Act at Kapurthala and the petitioner is facing great difficulty in prosecuting the said case, as there is a distance of about 98 kms between Kapurthala and Ludhiana.

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.*”

As per office report, the respondent is served, however, there is

no representation on his behalf.

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 petitioner, considering the fact that if the aforesaid petition is not transferred, the petitioner-wife will have to bear the litigation expenses and transportation expenses and also in view of the ratio of law laid down by Hon'ble Supreme Court in ***Sumita Singh's*** case (supra) and ***Rajani Kishor Pardeshi's*** case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

- (i) *The petition filed under Section 13 of the Hindu Marriage Act, pending before the Principal Judge, Family Court, Kapurthala will be transferred to the competent Court of jurisdiction at Ludhiana.*
- (ii) *The District Judge, Ludhiana will assign the said petition to the competent Court of jurisdiction.*
- (iii) *The Family Court at Kapurthala is directed to transfer all the record pertaining to the aforesaid case to District Judge, Ludhiana.*
- (iv) *The parties are directed to appear before the trial Court at Ludhiana within a period of 01 month from today.*

However, liberty is granted to the respondent-husband to revive

this petition, if he intends to contest the same, provided that:-

- (i) *The respondent will clear all the arrears of maintenance amount, if any, in terms of the petition filed by the petitioner either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.*
- (ii) *The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Kapurthala, on each and every date of hearing.*
- (iii) *The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Kapurthala, in case the respondent opts to contest this petition.*

18.07.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No