

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

Transfer Application No. 132 of 2020 (O & M)

Date of decision: 24.11.2022

Ruksana

.....Petitioner

VS

Basartdin

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Deepak Kundu, Advocate
for the petitioner.

None for the respondent despite service.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the Civil Suit No.CS/90/2019 filed by the respondent under Muslim Law seeking decree for restitution of conjugal rights, titled "Basartdin vs. Rukashana" pending in the Court of Principal Judge, Family Court, Hisar to a Court of competent jurisdiction at Rewari Camp at Kosli.

Though notice has already been served upon the respondent but no one is appearing on his behalf for the last three dates. Today also, nobody is present to represent him. Accordingly, this petition is being decided in his absence.

2. Learned counsel for the petitioner has contended :-

- i) that the parties were married on 04.2.2018 according to Muslim Law.

- ii) that a girl child was born out of this wedlock, who is around 4 years of age and residing with the petitioner.
- iii) that the petitioner-wife is living separately from the respondent-husband since 30.7.2019 and living with her parents at their mercy at Rewari.
- iv) that the petitioner is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband is not paying anything to her towards maintenance.
- v) The respondent-husband has filed Civil Suit No.CS/90/2019, which is pending before the Principal Judge, Family Court, Hisar.

The proceedings arising out of petition under Section 125 Cr.P.C filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Rewari Camp at Kosli.

An FIR under Section 363 IPC has also been lodged against the respondent on the allegations of kidnapping the girl namely Nirmala.

- v) that the distance between place of residence of the petitioner-wife i.e. Kosli, District Rewari and the place of proceedings qua Civil Suit No.CS/90/2019 filed by the respondent-husband, pending before the Principal Judge, Family Court, Hisar, is about 140 kilometers of one side.
- vi) that there is no able bodied person in the family of the petitioner, who can accompany her to the Court of proceedings at Hisar.

3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

4. I have heard learned counsel for the petitioner. The legal position in such like cases as the present one, is well established. In this regard, judgment of the Hon'ble Supreme Court

rendered in **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha,” 2022**

Live Law (SC) 627, is most relevant wherein the Hon’ble Supreme

Court has held 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.”

5. Further reliance can be placed upon the judgments in **“Sumita Singh vs Kumar Sanjay”, 2002 SC 396** and **“Rajani Kishor Pardeshivs 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.”

6. Even this Court in number of cases has followed the aforesaid principle of law. Accordingly, 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.

7. In view of the facts mentioned above and 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 deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The Civil Suit under the Muslim Law in Modern India, bearing No.CS/90/2019 filed by respondent husband seeking restitution of conjugal rights, titled as 'Basartdin vs. Rukashana', pending in the Court of Principal Judge, Family Court, Hisar is transferred to a Court of competent jurisdiction at Rewari.
- b) The Id. District Judge, Hisar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Rewari.
- c) The parties are directed to appear before the District & Sessions Judge, Rewari on 23.12.2022.
- d) The District Judge, Rewari will assign the said petition to the Court of competent jurisdiction.

8. The concerned Court at Rewari 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.

9. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

11. I am supported by the decisions rendered by a Co-ordinate Bench of this Court in **TA No. 1315/2022, Rohini Arora v Nitin Talwar; TA No. 1322 of 2022, Jaswinder Kaur v Gurvinderjeet Singh; and TA No. 1323 of 2022, Usha Rani v Karmajit Singh.**

Disposed of.

Pending application(s), if any, stands disposed of.

November 24, 2022

Vijay Asija

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned YES/NO

Whether Reportable YES/NO