

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

213

TA-176-2021 (O&M)
Date of decision: 11.10.2022

Ikraman**...Petitioner**

Versus

Aayub**...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Satpal Bhasin, Advocate
for the petitioner.

Mr. Rahul Jaswal, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the suit for restitution of conjugal rights under Mohammeden Law filed by the respondent-husband, pending before the Civil Judge (Jr. Divn.), Samalkha to the competent Court of jurisdiction at Ganaur, District Sonipat.

Learned counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner is residing at Ganaur with her three minor children and taking care of them. It is further submitted that despite the order dated 14.09.2022, directing the respondent to clear the arrears of maintenance, the respondent has not made any payment.

It is further submitted that the respondent-husband has filed the aforesaid suit at Samalkha in order to harass the petitioner. It is further submitted that the petitioner is facing great difficulty in prosecuting the said case, as she has to take care of three minor children.

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 for the petitioner has further relied upon ***2022 Live Law (SC) 627 N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha***, wherein 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.”

Learned counsel for the respondent-husband has submitted that despite the information given to respondent, he has not come present before this Court.

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 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), ***Rajani Kishor Pardeshi's*** case (supra) and ***N.C.V. Aishwarya's*** case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

- (i) *The aforesaid suit, pending before the Civil Judge (Jr. Divn.), Samalkha be transferred to the competent Court of jurisdiction at Ganaur, District Sonipat.*
- (ii) *The District Judge, Sonipat will assign the said petition to the competent Court of jurisdiction.*

- (iii) *The Civil Judge (Jr. Divn.), Samalkha is directed to transfer all the record pertaining to the aforesaid case to District Judge, Sonipat.*
- (iv) *The parties are directed to appear before the trial Court at Ganaur within a period of 01 month from today.*
- (v) *The Courts concerned, where the cases are pending between the parties, will accommodate them with one date in a calendar month.*

11.10.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>