

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

**TA No.199 of 2022 (O&M)
Date of decision: 10.08.2022**

Nisha Devi

....Petitioner

Versus

Amit Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ankit Kumar, Advocate (Legal Aid Counsel)
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

On oral request made by counsel for the petitioner, the main case, which is fixed for 12.09.2022, is taken up today for hearing.

TA-199-2022 (O&M)

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

Vide order dated 04.03.2022, the following order was passed:-

“This petition has been filed by the wife seeking the transfer of the petition filed under Section 9 of the Hindu Marriage Act, 1955, bearing case No.HMA/46/2022, titled as “Amit Kumar vs. Nisha”, pending in the Court of Principal Judge, Family Court, Ludhiana, to the Court of competent jurisdiction at Gurdaspur.

The petitioner claims that she got married to the respondent on 15.01.2019, and they have been blessed with a minor male child. She claims that presently, she is residing with her aged father at Deena Nagar, Village Raul, District Gurdaspur, and the distance between Ludhiana and Gurdaspur is approximately 167 Kms. The

petitioner further claims that she cannot properly defend the petition at District Courts, Ludhiana.

The learned counsel representing the petitioner contends that it is difficult for the petitioner to travel on each date of hearing.

Notice of motion for 06.04.2022.”

Counsel for the petitioner has argued that on account of a matrimonial discord, 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, Ludhiana.

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 167 Kms from Gurdaspur to Ludhiana.

Counsel for the petitioner has further contended that the petitioner is having a minor child, who is living in her care and custody and she is facing difficulty to defend the case as she has to travel from Gurdaspur to Ludhiana.

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

through counsel appearing in the trial Court, 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, Ludhiana will be transferred to the competent Court of jurisdiction at Gurdaspur.*
- 2. The District Judge, Gurdaspur, will assign the said petition to the competent Court of jurisdiction.*
- 3. The Family Court, Ludhiana is directed to transfer all the record pertaining to the aforesaid case to District Judge, Gurdaspur.*
- 4. The parties are directed to appear before the trial Court, Gurdaspur, within a period of 01 month from today.*

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

10.08.2022

yakub

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No