

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

**TA No.239 of 2020 (O&M)
Date of decision: 24.08.2022**

Shanvi @ Smariya

....Petitioner

Versus

Kashish Sharma and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Parminder Kaur (Chana), Advocate
(Legal Aid Counsel) for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for transfer of the Civil Suit No.224 of 2020 titled as "Shanvi @ Smariya vs Kashish Sharma and others", pending before the Court of Civil Judge (Sr. Division), Yamuna Nagar at Jagadhri to the competent Court of jurisdiction at Sri Muktsar Sahib.

The petitioner who is a minor child has filed the present petition through her mother/guardian.

Counsel for the petitioner has argued that on account of a matrimonial discord between the parents of petitioner, the following 03 litigations are pending at Sri Muktsar Sahib:-

1. Petition under Section 13 of the Hindu Marriage Act filed by Kashish Sharma against Rachandeep Kaur, before the District Judge, Sri Muktsar Sahib.
2. Complaint under Section 12 read with Sections 17 to 22 of the Protection of Women from Domestic Violence Act filed

by Rachandeep Kaur against Kashish Sharma and others, before the Ld. Judicial Magistrate Ist Class, Sri Muktsar Shaib.

3. Application under Section 125 Cr.P.C. filed by Rachandeep Kaur against Kashish Sharma before the Judicial Magistrate Ist Class, Sri Muktsar Sahib.

Counsel for the petitioner has further submitted that now the minor petitioner has filed the civil suit before the Court of Civil Judge (Jr. Division), Jagadhri, District Yamuna Nagar, praying for a decree of declaration to the effect that the plaintiff/petitioner is owner to the extent of 1/4th share and defendants No.1 to 3/respondents are also owner to the extent of 1/4th share each comprised in the property, as detailed in the civil suit. It is also argued that the civil suit has been filed at Jagadhri only because of the of the reason that the entire suit property is situated at Jagadhri, though, the other litigations between the parents of minor petitioner are pending at Sri Muktsar Sahib and therefore, the civil suit, which is an off-shoot of the matrimonial discord of the parents of the petitioner be also transferred to Sri Muktsar Sahib.

Counsel for the petitioner has also argued that on account of a petition filed by the respondent/husband, the minor petitioner along with her mother is facing great difficulty in prosecuting the said civil suit as there is a distance of about 320 Kms from Sri Muktsar Sahib to Yamuna Nagar at Jagadhri.

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 Civil Suit No.224 of 2020 titled as "Shanvi @ Smariya vs Kashish Sharma and others", pending before the Civil Judge (Sr. Division), Yamuna Nagar at Jagadhri will be transferred to the competent Court of jurisdiction at Sri Muktsar Sahib.*
2. *The District Judge, Sri Muktsar Sahib, will assign the said petition to the competent Court of jurisdiction.*
3. *The Civil Judge (Sr. Division), Yamuna Nagar at Jagadhri is directed to transfer all the record pertaining to the aforesaid case to District Judge, Sri Muktsar Sahib.*
4. *The parties are directed to appear before the trial Court, Sri Muktsar Sahib, within a period of 01 month from today.*

5. *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

24.08.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No