

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

228

TA-280-2022 (O&M)
Date of decision: 26.08.2022

Nidhi**...Petitioner**

Versus

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

Present:- Mr. Aditya Pratap Singh, Advocate
for the petitioner.

Mr. J. S. Lalli, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

While issuing notice of motion on 24.03.2022, the following order was passed:

“The applicant is seeking transfer of a petition bearing No.HMA-2457/2021 titled as 'Vikas Chandel Vs. Nidhi' filed by the respondent under Section 13 of the Hindu Marriage Act, 1955 which is pending in the Court of learned Principal Judge, Ludhiana (Annexure P-2), to a Court of competent jurisdiction at Pathankot, which is approximately 175 kms. away.

Learned counsel for the applicant contends that within two months of her marriage with the respondent, the applicant was thrown out of her matrimonial home and ever since then she has been living at Pathankot at the mercy of her parents. It has also been submitted that soon after being thrown out of her matrimonial home, the applicant had filed a petition under Section 125 Cr.P.C. at Pathankot which is pending adjudication.

On a pointed query put to the learned counsel as to

what was the stage of proceedings Section 13 of the Hindu Marriage Act, 1955, he submitted that it is still at the initial stage.

Learned counsel submits that since there is already one case pending at Pathankot wherein the respondent-husband has already put in an appearance, the petition under Section 13 of the Hindu Marriage Act, 1955 be also transferred moreso, as the applicant has no independent source of income and thus, it would be difficult for her to defend the proceedings at Ludhiana.

Notice of motion for 07.07.2022.

Meantime, the Court below shall adjourn the case beyond the date fixed by this Court.”

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.”

The only objection raised by learned counsel for the respondent-husband, on the basis of the reply, is that the petitioner has already been proceeded *ex-parte* in the proceedings under Section 13 of the Hindu Marriage Act.

Be whatsoever, the petitioner has a right to move an appropriate application for setting aside the aforesaid *ex-parte* decree.

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 Family Court, Ludhiana will be transferred to the competent Court of jurisdiction at Pathankot.*
- (ii) *The District Judge, Pathankot will assign the said petition to the competent Court of jurisdiction.*
- (iii) *The Family Court at Ludhiana is directed to transfer all the record pertaining to the aforesaid case to District Judge, Pathankot.*
- (iv) *The parties are directed to appear before the trial Court at Pathankot 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.*

26.08.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No