

TA-271-2022
Date of decision 09.08.2022

PRIYANKA

...PETITIONER

Versus

SOM DUTT

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rahul Jaswal, Advocate
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN, J (Oral):

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 9 of the Hindu Marriage Act, pending before the Family Court, Gohana District Sonapat to the competent Court of jurisdiction at Panipat.

While issuing notice of motion, following order was passed on 22.03.2022: -

“The applicant is seeking transfer of a petition bearing No.DMC/225/2021 titled as 'Somdutt Vs. Priyanka' filed by the respondent under Section 9 of the Hindu Marriage Act, 1955 which is pending in the Court of learned Principal Judge, Family Court, Gohana, District Sonapat (Annexure P-3), to a Court of competent jurisdiction at Panipat.

Learned counsel for the applicant submits that after she was thrown out of her matrimonial home by the respondent, she along with her 12 year old child had been residing with her parents at Panipat. He submits that the following litigations are already pending between the parties at Panipat:-

i) Criminal proceedings in case FIR No.843 dated

11.12.2021 under Sections 323, 34, 406, 498-A and 506 IPC registered at Police Station Old Industrial Panipat.

ii) Petition under Section 125 Cr.P.C.

iii) Petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

Learned counsel further submits that the applicant would not be averse to an amicable settlement/reconciliation with the respondent since the parties are blessed with a daughter.

Notice of motion for 09.08.2022.”

Learned counsel for the petitioner further submits that the petitioner is having a minor child, who is living in her care and custody, therefore, it is very difficult for her to defend the said case at Family Court, Gohana, District Sonapat.

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 has further relied upon N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, 2022 Live Law (SC) 627, wherein the Hon’ble Supreme Court held as under: -

“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 behavioral 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.

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 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 the petitioner-wife will have to bear the litigation expenses and transportation expenses and in view of the judgments in 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, Gohana District Sonapat will be transferred to the competent Court of jurisdiction at Panipat.*
2. *The District Judge, Panipat will assign the said petition to the competent Court of jurisdiction.*
3. *The Family Court, Gohana District Sonapat is directed to transfer all the record pertaining to the aforesaid case to District Judge, Panipat.*
4. *The parties are directed to appear before the District Judge, Panipat within a period of 01 month from today.*

Present petition is disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

09.08.2022
monika

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