

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA-266-2022 (O&M)
Date of decision: 01.08.2022

Sangeet Malhi

....Petitioner

Vs.

Varun Pritam Singh Malhi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Simrat Kaur, Advocate for
Mr. Sunil Kumar, Advocate
for the petitioner.

Mr. R.S. Bal, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 25 of the Guardians & Wards Act read with Section 6 of the Hindu Minority and Guardianship Act, 1956, pending before the Family Court, Ludhiana to the competent Court of jurisdiction at SAS Nagar (Mohali).

While issuing notice of motion, following order was passed by this Court on 21.03.2022: -

“The applicant is seeking transfer of a petition bearing

No.GW-152-2019 titled as 'Varun Pritam Singh Malhi Vs. Jaipal Toor alias Jaipal Singh and others' filed under Section 25 of the Guardians & Wards Act, 1890 read with Section 6 of the Hindu Minority and Guardianship Act of 1956 for the custody of the minor children of the parties, which is pending in the Court of learned Additional Principal Judge, Family Court, Ludhiana (Annexure P-1), to a Court of competent jurisdiction at Mohali.

Learned senior counsel for the applicant submits that both the minor children are residing with the applicant at Mohali whereas the respondent-husband is presently working at Nagpur. She submits that the applicant in the circumstances would be greatly inconvenienced to travel on each and every date of hearing to Ludhiana along with her minor children. It has also been submitted that as per Section 9 of the Guardians & Wards Act, 1890 the Courts where the minor children ordinarily reside would have the jurisdiction to decide a petition under Section 25 of the Guardians & Wards Act, 1890 for the custody of the minor children. She has also brought to the notice of this Court that another litigation is pending between the parties under the Protection of Women from Domestic Violence Act, 2005 at Ludhiana, however, this Court has stayed further proceedings in the said case at the Courts at

Ludhiana.

Notice of motion for 01.08.2022.

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 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 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.

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 respondent No.1 has raised only objection that despite the order passed by the Family Court, granting visiting right to the respondent, he is unable to meet his child.

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.

Be whatsoever, 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 by the respondent-husband under Section 25 of the Guardians & Wards Act read with Section 6 of the Hindu Minority and Guardianship Act, 1956, pending before the Family Court, Ludhiana will be transferred to the competent Court of jurisdiction at SAS Nagar (Mohali).*
- 2. The District Judge, SAS Nagar (Mohali) 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, SAS Nagar (Mohali).*
- 4. The parties are directed to appear before the Family Court, SAS Nagar (Mohali) within a period of 01 month from today.*

Present petition is disposed of accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

01.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No