

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

Transfer Application No. 349 of 2021 (O & M)

Date of decision: 29.11.2022

Seema Sharma

.....Petitioner

vs

Raman Kumar

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- None for the petitioner.

Mr. Munish Kumar Choudhary, Advocate
for the respondent.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955 titled "Raman Kumar Sharma vs. Seema Sharma" pending in the Court of Principal Judge, Family Court, Jalandhar to a Court of competent jurisdiction at Patiala.

2. It has been contended in the petition :-

- i) that the parties were married on 03.2.2001 according to Hindu rites and rituals.
- ii) that two male children, aged about 20 years and 16 years, born out of this wedlock, and are living in the care and custody of the petitioner.
- iii) that the petitioner-wife is living separately from the respondent-husband since March 2020 and living with her parents at their mercy at Patiala.
- iv) that the petitioner is unemployed, having no source of income and totally dependent upon her parents and the

respondent-husband, who is working as H.R. Manager in Sant Rubber Ltd. #373-374, Lather Complex, Kapurthala Road, Jalandhar and earning approximately Rs.95,000/- per month, is not paying anything to her and both the children towards maintenance.

- v) The respondent-husband has filed the petition under Section 13 of the Hindu Marriage Act, which is pending before the Principal Judge, Family Court, Jalandhar.

The proceedings arising out of petition under Section 125 Cr.P.C., filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Patiala.

- v) that the distance between place of residence of the petitioner-wife i.e. Patiala and the place of proceedings under Section 13 of the Hindu Marriage Act, 1955 filed by the respondent-husband, pending before the Principal Judge, Family Court, Jalandhar, is about 155 kilometers of one side.

- vi) that being unemployed and having no source of income, the petitioner has not any proficient male member in her family to can accompany her to the Court of proceedings at Jalandhar as her parents are old aged and her both sons are studying.

3. It is *inter alia* on these grounds, transfer of the case, as detailed in para 1 above, is prayed for.

In response to the notice of motion issued, the respondent through his counsel put in appearance and filed reply to the petition.

Learned counsel for the respondent has submitted that the petitioner is the legally wedded wife of the respondent and from this wedlock they have two sons, who are residing with the petitioner.

Learned counsel for the respondent further submitted that the petitioner has filed the present petition on frivolous, concocted and baseless

grounds. To controvert the pleadings taken by the petitioner in her petition that nothing has been given to her by the respondent, learned counsel for the respondent has submitted that the petitioner by making undue pressure upon the respondent got registered the property measuring 207 square yards i.e. #121/3, New Baba Budhaji Nagar, Jalandhar by way of registered sale deed No.7427 dated 17.1.2003 and transferred in her name on 12.4.2018. Learned counsel further submitted that the respondent had also purchased a plot measuring 3330 square feet, situated at Shanti Enclave, Tehsil and District Jalandhar, worth a total consideration of Rs.8,82,000/- in the name of petitioner vide sale deed No.6734 dated 18.10.2012 in order to secure the future of his both sons. It is further submitted that yet the petitioner not stopped, she further compelled the respondent to withdraw his FD amount of Rs.4,33,000/- from Punjab National Bank, Patiala and further Rs.19,00,000/- from various bank accounts of respondent and to transfer the amount in various bank accounts of the petitioner opened in HDFC Bank, Yes Bank, Punjab National Bank and SBI Bank.

Learned counsel further submits that except the greed of money and property, the petitioner was having very cruel nature and used to insult the respondent in front of the children and always tried to run away from her matrimonial responsibilities. Even she refused to cook the food for the respondent also and when the desire of the petitioner for more money was not fulfilled by the respondent, she kicked the respondent out of the house on 20.5.2020. Learned counsel for the respondent submits that in this way, the petitioner fraudulently

took everything from the respondent and dispossessed him forcibly from the residential properties, mentioned above.

Feeling aggrieved from the doings of the petitioner, the respondent finally filed the Civil Suit under Section 6 of the Specific Relief Act (Annexure R-1) on 18.11.2020 for restoration of possession of residential house and another Civil Suit under Section 34 of the Specific Relief Act for declaring the respondent as owner of the property measuring 3330 square feet (Annexure R-2). Both the civil suits are pending in the Court at Jalandhar.

Learned counsel for the respondent further submits that the petitioner very cleverly mentioned about the petition filed under Section 125 Cr.P.C. but did not disclose about pendency of the two civil suits (Annexure R-1 and R-2) pending before the Civil Court at Jalandhar and therefore by concealing the said facts from the Court, she did not come to the Court with clean hands. Learned counsel further submits that the Family Court at Patiala has no jurisdiction because the petitioner is residing at Jalandhar as she is having the property in her name, which she forcibly got transferred in her name.

4. I have heard learned counsel for the respondent and perused the case file.

The legal position in such like cases as the present one, is well established. In this regard, judgment of the Hon'ble Supreme Court rendered in **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha," 2022 Live Law (SC) 627**, is most relevant wherein the 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.”

5. Further reliance can be placed upon the judgments in **“Sumita Singh vs Kumar Sanjay”, 2002 SC 396** and **“Rajani Kishor Pardeshivs 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.”

6. Even this Court in number of cases has followed the aforesaid principle of law. Accordingly, 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.

7. In view of the facts mentioned above and 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 deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The petition filed by respondent husband under Section 13 of Hindu Marriage Act, 1955, bearing No. 755 of 2020 titled as 'Raman Kumar Sharma vs. Seema Sharma', pending in the Court of Principal Judge, Family Court, Jalandhar is transferred to a Court of competent jurisdiction at Patiala.
- b) The Id. District Judge, Jalandhar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Patiala.
- c) The parties are directed to appear before the District & Sessions Judge, Patiala on 19.12.2022.
- d) The District Judge, Patiala will assign the said petition to the Court of competent jurisdiction.

8. The concerned Court at Patiala will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.

9. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

11. I am supported by the decisions rendered by a Co-ordinate Bench of this Court in **TA No. 1315/2022, Rohini Arora v Nitin Talwar**; **TA No. 1322 of 2022, Jaswinder Kaur v Gurvinderjeet Singh**; and **TA No. 1323 of 2022, Usha Rani v Karmajit Singh**.

Disposed of.

Pending application(s), if any, stands disposed of.

November 29, 2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	YES/NO
Whether Reportable	YES/NO