

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

TA No. 374/2021

Date of decision: 13/12/2022

Surbhi Mehta

.....Petitioner

v

Vipul Mehta

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikas Singh, Advocate for the petitioner.

Mr. Sahil Goel, Advocate for the respondent

Nidhi Gupta, J.(Oral)

1. Prayer in this petition filed by petitioner wife is for transfer of Civil Suit No.75/2021 dated 1.2.2021 titled 'Vipul Mehta v Surbhi Mehta' from the Court of Civil Judge (Junior Division) Derabassi, to a Court of competent jurisdiction at Nakodar, District Jalandhar.

2. Learned counsel for the petitioner states:

i) that the marriage between the parties was solemnized on 1.10.2006 at Patiala according to Hindu rites;

ii) that a male child-Manas was born out of this wedlock on 25.4.2010, who is in the care and custody of the petitioner;

iii) that the petitioner was ill treated and ultimately thrown out of her matrimonial home whereafter she started residing with her parents at Sultanpur Lodhi;

iv) that the petitioner filed a petition under Section 125 Cr. PC at Sultanpur Lodhi, which respondent got transferred to Nakodar vide order dated 10.4.2019 (Annexure P-1) passed by this Court in CRM-M 4378/2019;

v) that similarly complaint filed by the petitioner under the DV Act at Sultanpur Lodhi was got transferred by the respondent to Nakodar vide order dated 23.1.2018 passed by this Court in CRM-M-26346/2016;

vi) that after cancellation of FIR lodged by the petitioner against respondent, she has now filed a complaint at Sultanpur Lodhi in which respondent has been summoned;

vii) that father of the petitioner is a practicing Lawyer at Sultanpur Lodhi and hence the aforesaid proceedings mentioned in paras (iv to vi) were transferred from Sultanpur Lodhi to Nakodar at the behest of the respondent;

viii) that the respondent has filed a petition under Section 13 of the HMA at Panchkula and petitioner vide TA NO.188/2021 had sought transfer of the same to court of competent jurisdiction at Nakodar, which has been allowed vide order dated 22.8.2022 passed by Coordinate Bench of this Court;

ix) that now respondent has filed a suit inter alia for declaration in the Courts at Derabassi to the effect that he is real and absolute owner of the suit property i.e. plot measuring 110 sq. yards, transfer of which is being sought to Nakodar through this Transfer Petition;

x) that petitioner along with minor son are residing at Sultanpur Lodhi; and respondent is not paying any maintenance as directed by the Court.

xi) the respondent has filed a petition under Sections 7 and 25 of the G&W Act for appointing him as guardian of the

minor son, which is pending in the Courts at Sultanpur Lodhi.

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

4. Upon notice, respondent has put in appearance and filed reply, which is taken on record.

5. Learned counsel for the respondent vehemently submits that petitioner need not to appear in civil suit on every date; in such cases, convenience alone is not to be considered but totality of the circumstances has to be considered. It is further stated with regard to the suit property, that other connected cases are also pending at Derabassi wherein neighboring plot owners are parties and boundary dispute/breaking of boundary wall is the subject matter of such cases. In one such Civil Suit titled 'Harvinder Kaur v Vipul Mehta' petitioner is also a defendant. The said suits are at evidence stage. It is further submitted that petitioner is getting Rs.35,000/- per month as interim maintenance. Thus, the transfer of civil suit as prayed for in this Transfer Petition, is contested.

6. Heard learned counsel for the parties.

7. Prayer in the present petition is for transferring suit for declaration to the effect that the respondent/plaintiff is owner in possession of whole plot measuring 110 square yards and that the sale deed bearing Wasika No.10187 dt. 21.9.2011 in favour of petitioner/defendant to the extent of ½ share be treated/corrected in the name of plaintiff/respondent. Further, it is case of the respondent himself that in the other suits with neighboring plot owners, the issue involved is regarding boundary/breaking of boundary wall. As such, those suits have nothing to

do with the present dispute pending between the parties, transfer of which is being sought by the petitioner herein. Hence, I do not see any legal impediment in the transfer of said suit from Derabassi to court of competent jurisdiction at Nakodar, Distt. Jalandhar. As noticed above, 3 other cases are also already pending at Nakodar.

8. Moreover, 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.”

9. Further reliance can be placed upon the judgments in **“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.”

10. 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 traveling expenses.

11. After hearing the learned counsel for the parties 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 deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The Civil Suit No.75/2021 dated 1.2.2021 titled ‘Vipul Mehta v Surbhi Mehta’ pending in the Court of Civil Judge (JD) Derabassi is transferred to a court of competent jurisdiction at Nakodar, Distt. Jalandhar.
- b) The Id. District Judge, SAS Nagar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Jalandhar.
- c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Jalandhar on 16.1.2023.

d) The District Judge, Jalandhar will assign the said civil suit to the Court of competent jurisdiction for further proceedings in accordance with law.

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

Accordingly, this petition is allowed in the above terms.

Pending applications if any, stand disposed of.

13/12/2022
Joshi

(Nidhi Gupta)
Judge