

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

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**TA-400-2021 (O&M)**  
**Date of decision: 26.08.2022**

**Amandeep Kaur****...Petitioner**

**Versus**

**Navdeep Singh and others****...Respondents****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Mohit Sadana, Advocate  
for the petitioner.

None for the respondents.

**ARVIND SINGH SANGWAN, J. (Oral)**

Prayer in this petition is for transfer of the Civil Suit bearing No. CS-363 of 2019, titled as *Amandeep Kaur vs. Navdeep Singh & others*, pending before the Additional Civil Judge (Sr. Divn.), Moga to the competent Court of jurisdiction at Chandigarh.

This petition is pending since 2021 and the notice of motion was issued on 07.04.2021 and later on, it was noticed that the respondents are served, however, no one appeared on behalf of them.

Learned counsel for the petitioner submits that the marriage of petitioner Amandeep Kaur and respondent No. 1 Navdeep Singh was solemnized on 16.11.2012 at Chandigarh and later on, the petitioner came to know that respondent No.1 Navdeep Singh was already married with respondent No. 2 Prabhdeep Kaur on 02.12.2006, on which, the petitioner filed a petition under Section 11 read with Section 13 of the Hindu Marriage Act. The petitioner also gave a complaint against respondent No. 1, on which, FIR No. 398 dated 26.12.2021 was registered against respondent

No. 1 Navdeep Singh and others under Sections 406, 420, 495, 498-A of the IPC at Police Station Sector 31, Chandigarh and the same is pending trial. The respondent-husband filed a petition bearing CRM-M-5905-2015 praying for grant of anticipatory bail, which was dismissed on 28.05.2015 by this Court noticing the above facts.

Learned counsel for the petitioner further submits that in between, the petitioner also came to know that respondent No. 1 Navdeep Singh has filed a petition under Section 13 of the Hindu Marriage Act i.e. HMA No. 81 dated 01.06.2012, titled as ***Navdeep Singh vs. Prabhjeet Kaur*** (respondent No. 2 herein), seeking that their marriage be declared null and void, however, the said petition was later on withdrawn by Navdeep Singh and later on, respondent No. 2 Prabhjeet Kaur filed a civil suit bearing No. 195 of 2016, praying for declaration to the effect that the contents/pleadings of petition under Section 13 of the Hindu Marriage Act (aforesaid HMA No. 81) be declared illegal, null and void and not binding on the rights of the plaintiff. The said civil suit was allowed on 21.01.2019 by the Additional Civil Judge (Sr. Divn.), Moga. The operative part of the judgment reads as under:

“14. In view of my detailed findings on the aforesaid issues as discussed above, the suit of the plaintiff is decreed. Contents of petition under Section 13 of the Hindu Marriage Act, 1955 having HMA No. 81 dated 01.06.2012 titled as 'Navdeep Singh versus Prabhjeet Kaur' are declared illegal, null, void, abinitio, fictitious and having no value in the eyes of law. Defendant or his attorney associates are permanently restrained from changing the un-marital status/single status of plaintiff illegally. Decree sheet be prepared accordingly. File be

consigned to the Judicial Record Room, Moga after due compliance.”

Respondent Navdeep Singh, who was defendant in that suit, made an admission that he was never married to Prabhjeet Kaur, however, the petitioner was not impleaded as defendant in said suit.

Learned counsel for the petitioner has referred to para No. 1 of the judgment, in which it is specifically stated that by plaintiff Prabhjeet Kaur that marriage of Navdeep Singh was solemnized with a girl, namely Amandeep Kaur, i.e. the present petitioner.

On the face of it, the said suit was not maintainable and the civil Court had no jurisdiction to declare the pleadings of an earlier petition, filed under Section 13 of the Hindu Marriage Act, null and void and not binding upon the rights of the plaintiff. Surprisingly, the civil Court exceeded its jurisdiction and passed such an illegal decree.

Learned counsel for the petitioner further submits that now the petitioner has filed the aforesaid civil suit No. 363 praying for setting aside the said decree dated 21.01.2019 passed by the Additional Civil Judge (Sr. Divn.), Moga in Civil Suit No. 195 on the ground that the same was obtained by misrepresentation of facts and is an outcome of collusion between Navdeep Singh and Prabhjeet Kaur and also on the ground that the said suit was not maintainable.

Learned counsel for the petitioner further submits that the suit of the petitioner had to be filed at Moga, where the said decree was passed, however, now respondent No. 1 Navdeep Singh is extending threats to the petitioner, therefore, the same may be transferred to the competent Court of jurisdiction at Chandigarh.

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.”

As per office report, the respondent-husband is served, however, there is no representation on his behalf.

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 aforesaid civil suit No. CS-363 of 2019, titled as **Amandeep Kaur vs. Navdeep Singh & others**, pending before the Additional Civil Judge (Sr. Divn.), Moga be transferred to the competent Court of jurisdiction at Chandigarh.*
- (ii) *The District Judge, Chandigarh will assign the said petition to the competent Court of jurisdiction.*
- (iii) *The Additional Civil Judge (Sr. Divn.), Moga is directed to transfer all the record pertaining to the aforesaid case to District Judge, Chandigarh.*

- (iv) *The parties are directed to appear before the trial Court at Chandigarh 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.*

However, this petition demonstrates that the Civil Judge has exceeded its jurisdiction without referring to any case law.

It is worth noticing that Section 7 of the Family Courts Act, 1984 (*for short 'the Act'*) provides as under:

Sub-section (1) of Section 7 provides that:

"Section 7(1) - Subject to the other provisions of this Act, a Family Court shall.

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Courts extends.

**Explanation.**-The suits and proceedings referred to in the sub- section are suits and proceedings of the following nature, namely.

(a).....

**(b) a suit or proceedings for a declaration as to the validity of a marriage or as to the matrimonial status of any person.**

(c).....(not material)

(d).....(not material)

(e).....(not material)

(f).....(not material)

(g).....(not material)

(2).....(not material)

(8) Exclusion of jurisdiction and pending proceedings:-

Where a Family Court has been established for any area.-

**(a) no district Court or any subordinate Civil Court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceedings of the nature referred to in the explanation to that sub-section;**

**(b) xx xxxxxx;**

**(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973.**

A Division Bench of this Court in *P. Sunder Raj vs. P. Sarika Raj, 2015 (9) RCR (Civil) 846*, while relying upon a judgment of Hon'ble Supreme Court rendered in *S. D. Joshi vs. High Court of Judicature at Bombay, (2011) 1 SCC 252*, has also interpreted Section 7 of the Act and has held that the decree of a Family Court cannot be set aside in a declaration suit before a regular civil Court.

Though in the instant case, the petition filed by respondent No. 1 against respondent No. 2 under Section 13 of the Hindu Marriage Act was withdrawn, however, the declaration as prayed for could not have been granted by the civil Court in view of Section 7 of the Act read with Section 34 of the Specific Relief Act, 1963 and Section 9 of the Code of Civil Procedure.

The Registrar General of this Court is directed to seek an explanation from Ms. Daljit Kaur, Additional Civil Judge (Sr. Divn.), Moga, who has passed the aforesaid decree dated 21.01.2019 in Civil Suit No.

195/2016, as to how the civil suit for declaration in the instant form was entertained and a decree was passed in favour of the plaintiff.

Let there be a note that while furnishing explanation, the Judicial Officer concerned will refer to the judgments of Hon'ble Supreme Court as well as of this Court as to how by exceeding its jurisdiction, the said Court has entertained the civil suit and passed the decree in favour of plaintiff Prabhjeet Kaur.

The explanation be also placed before the Director, Chandigarh Judicial Academy, Chandigarh within a period of two months from today, who after going through this order as well as the explanation, will issue appropriate instructions/guidelines in this regard to all the Judicial Officers in the States of Punjab and Haryana as well as Union Territory, Chandigarh.

**26.08.2022**

*Waseem Ansari*

**(ARVIND SINGH SANGWAN)  
JUDGE**

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*