

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

Transfer Application No. 314 of 2020 (O & M)

Date of decision: 07.12.2022

Alka Garg

.....Petitioner

Vs

Rajiv Garg

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Deepak Sethi, Advocate
for the petitioner.

Mr. D.K. Singal, 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 9 of the Hindu Marriage Act, 1955 (for short 'the Act') titled "Rajiv Garg Vs. Alka Garg" pending in the Court of Principal Judge, Family Court, Panchkula to a Court of competent jurisdiction at Kurukshetra.

2. Learned counsel for the petitioner has contended :-

- i) That the parties were married on 26.11.1996 according to Hindu rites and rituals.
- ii) That two girl children were born out of this wedlock, one is around 25 years of age and the other is 19 years of age and are in the care and custody of the respondent-husband.

- iii) That the petitioner-wife is living separately from the respondent-husband since 10.09.2019 and living with her parents at their mercy at Ladwa, District Kurukshetra.
 - iv) That the petitioner is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband is not paying anything to her towards maintenance.
 - v) The respondent-husband has filed the petition under Section 9 of the Hindu Marriage Act, which is pending before the Principal Judge, Family Court, Panchkula.
 - vi) 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 Kurukshetra.
 - v) That the distance between place of residence of the petitioner-wife i.e. Ladwa, District Kurukshetra and the place of proceedings under Section 9 of the Hindu Marriage Act, 1955 filed by the respondent-husband, pending before the Principal Judge, Family Court, Panchkula, is about 104 kilometers of one side.
 - vi) That there is no proficient male member in the family of the petitioner, who can accompany her to the Court of proceedings at Panchkula.
3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.
4. The Co-ordinate Bench of this Court vide order dated 18.3.2020 directed both the parties to appear before the Mediation and Conciliation Center of this Court to explore the possibility of some amicable settlement. As per Mediation report dated 16.08.2022, the parties could not arrive at an amicable settlement.

The respondent has filed written statement controverting the allegations leveled by the petitioner-wife in the present petition. It

has been submitted by learned counsel for the respondent that initially the petitioner and the respondent were living a happy life for more than 20 years. It is after the recent interference in their marriage by the sister of the petitioner that there is discord between the parties. Said sister has influenced the petitioner-wife and taken her to an ashram in Vrindavan, and she has also tried to take the daughters of the parties to the said ashram as well. However, the respondent has done his best to resist the breakdown of his matrimonial home as the daughters of the parties are very good in studies as well as in other social activities like sports, quizzes etc. It is stated that under incorrect influences, the petitioner has bluntly refused to live in the company of the respondent and the daughters and started threatening the respondent and even insulted him in front of grown up daughters as well as before the family members.

Not only this, the petitioner had also lodged a complaint against the respondent in Women Cell, Sector 5, Panchkula on 26.7.2018 but she herself withdrew the same on 04.8.2018. The petitioner again lodged another complaint against the respondent on 30.7.2018 before the Superintendent of Police, Kurukshetra alleging totally different allegations as leveled by her in the aforementioned first complaint. The complaint was inquired by the police but except the misunderstanding between the parties nothing could be found out and ultimately petitioner withdrew the second complaint also. Due to excess dispute between the parties, the elder daughter of petitioner called her maternal uncle on 10.9.2019 and requested him to come at Panchkula to resolve the misunderstanding between the parties. After

some time, brother of the petitioner took her to her parental home with an assurance to the respondent that he would drop her back within 15 days by convincing her to maintain healthy relationship with the respondent-husband as well as with the daughters. However, when the petitioner-wife did not return to the matrimonial home, the daughters of the parties went to Faridabad on 03.1.2020 to bring their mother back to home but the petitioner-wife bluntly refused to join them and the respondent.

Learned counsel for the respondent submits that the respondent was trying to handle his responsibilities towards his grown up daughters very honestly and sincerely. He further submits that the respondent has to also bear the added responsibility of his old and ailing parents who are living with him. The father of the respondent is suffering from heart disease, diabetes and hypothyroidism, and mother of the respondent is also suffering from primary pulmonary hypertension and hyperthyroidism and both are undergoing treatments. At this stage of life, the young girls, as also the parents of respondents need utmost care. He further submits that because of the atmosphere created by the petitioner-wife, the younger daughter of the respondent is also suffering from psychological issues and is undergoing regular treatment under the supervision of the respondent from Arya Hospital, Neuropsychiatry & Trauma Centre, Manimajra (UT) Chandigarh. The respondent has to look after her as well. Learned counsel further submits that the respondent himself is also suffering from slip disk problem and has been advised by the doctor not to travel.

5. I have heard learned counsel for the parties and gone through the records carefully.

6. In view of the facts as enumerated above, I am of the view that it is the petitioner-wife who has remained adamant not to join the company of respondent as well as the daughters and has herself opted to live separately. Even the complaints filed by her before the police authorities were found baseless, and ultimately withdrawn by her. Even otherwise, she is having no responsibilities as it is the respondent who is single-handedly looking after both their daughters, as also his old and ailing parents, despite himself suffering from slip disk problem. In contrast, no extenuating circumstances have been brought to light by the petitioner, on the basis of which it is shown that she is not in a position to travel the relatively short distance of about 100 kilometers as admittedly, it is hardly a two-hour journey between Panchkula and Kurukshetra, and that too not daily but only on the date of hearing.

This Court is well aware of the preponderance of law in cases of transfer emanating from matrimonial disputes is in favour of the wife. However, in certain similar cases as the present one, the Hon'ble Supreme Court, as well as this Court have refused relief to the wife. One such case which may be referred to is: **(2006) 9 SCC 197 'Anindita Das Vs. Srijit Das'** wherein Hon'ble Supreme Court under similar circumstances dismissed the wife's application seeking transfer of petition filed by the husband. Reference in this regard may also be made to two cases of this Court where, in similar circumstances this Court had dismissed transfer applications filed on behalf of the wife.

These are: **TA no. 126 of 2018 Smt. Akhwinder Kaur Vs. Sh. Gurpreet Singh;** and **TA No. 299 of 2019 Nisha alias Manisha vs. Amarveer Yadav.**

Accordingly, in view of the facts and circumstances of the present case as noted above, as also the precedents of Case law as above, finding no merit in this petition, the same is hereby dismissed.

Pending application(s) if any stand disposed of.

December 07, 2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

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