

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA-430-2021 (O&M)
Date of decision: 08.08.2022

Kamaljit Kaur

....Petitioner

Vs.

Lakhwinder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Bhavna Grewal, Advocate
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, pending before the Family Court, SAS Nagar (Mohali) to the competent Court of jurisdiction at Patiala.

While issuing notice of motion, following order was passed on 23.04.2021: -

“Learned counsel for the applicant argues that the respondent-husband has filed a petition under Section 9 of the Hindu Marriage Act, 1955 before the Competent Court of Law at SAS Nagar, Mohali, which is now fixed for 26.04.2021, be

transferred to the Competent Court of Law at Patiala, where, the applicant-wife is residing. Learned counsel for the applicant submits that applicant-wife has no means to travel from Patiala to SAS Nagar (Mohali) and the applicant has already initiated the proceedings under Section 24 of the Hindu Marriage Act for the grant of maintenance, which is now pending before the Court at Patiala and therefore, the petition filed by the respondent-husband, which is actually to harass the applicant, be transferred to Patiala especially in view the law laid down by the Hon'ble Supreme Court passed in 'Neelam Kanwar Vs. Devinder Singh Kanwar', 2000(10) SCC 589 as well as in 'Sumita Singh Vs. Kumar Sanjay and another', 2001(10) SCC 41."

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.”

As per office report, notice issued to the respondent has not

been received back served, however, in view of the interim order dated 23.04.2021, vide which the trial Court was directed to adjourn the case beyond the date fixed before this Court, it is a deemed service upon the respondent.

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 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 under Section 13 of the Hindu Marriage Act, pending before the Family Court, SAS Nagar (Mohali) will be transferred to the competent Court of jurisdiction at Patiala.*
- 2. The District Judge, Patiala will assign the said petition to the*

competent Court of jurisdiction.

3. *The Family Court, SAS Nagar (Mohali) is directed to transfer all the record pertaining to the aforesaid case to District Judge, Patiala.*

4. *The parties are directed to appear before the Family Court, Patiala within a period of 01 month from today.*

Present petition is disposed of accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

08.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No