

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

**TA No. 532/2021(O&M) and
T.A. No. 542/2021 (O&M)**

Date of decision: November 22, 2022

Meenakshi Baweja

.....Petitioner

v

Deepak Baweja

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Viren Jain, Advocate with
Mr. Manik Makkar, Advocate for the petitioner/wife

Mr. CM Munjal, Advocate for the respondent/husband

Nidhi Gupta, J.

CM 7094-CII/2022 in TA 532/2021:

Vide order dated 17.3.2022, this Court had directed the petitioner to file affidavit regarding her place of residence, as the counsel for the respondent had vehemently disputed the petitioner's assertion that she is living in Mansa along with her children. This application is filed in compliance of said order dated 17.3.2022 to place on record the affidavit as directed, as well as Annexures P8 to P12 which are the report cards, certificates, and fee receipts to show that the petitioner's children are studying at JR Millennium School, Nangal Colony, Shahid Bhagat Singh Chowk, Mansa, Punjab. This application is allowed and the affidavit and the Annexures P8 to P12 are taken on record.

CM 7093-CII/2022 in TA 532/2021

Prayer in this application is for fixing early date of hearing in the case. The main case having been disposed of vide this common order, the said application has become infructuous.

CM 11568-CII/2021 in TA 532/2021

Prayer in this application is for staying the proceedings in the petition under Section 6 of the Hindu Minority and Guardianship Act read with Section 25 of the Guardianship and Ward Act in TA 532/2021.

Vide order dated 9.12.2021 passed by this Court, the same was ordered to be heard with the main case.

The main case being disposed of vide this common order, the said application has also become infructuous.

Main case:

1. This common order shall dispose of Transfer Application Nos. 532 and 542 of 2021 filed by petitioner/wife seeking transfer of proceedings, as detailed in para 2 hereinafter, pending in the Courts at Gurugram to the courts of competent jurisdiction at Mansa, Punjab, as the parties, facts, submissions and prayer made in both these petitions are the same.

2 Prayer in T.A. 532/2021 filed by petitioner wife is for transfer of the petition filed by respondent-husband under Section 6 of the Hindu Minority and Guardianship and Ward Act bearing No. GW-88/2020 titled as “Deepak Baweja vs. Meenakshi Baweja”, pending in the Court of

Additional Principal Judge, Family Court, Gurugram to a court of competent jurisdiction at Mansa;

In T.A.No.542/2021 again filed by the petitioner wife prayer is for transfer of the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act,1955, bearing case No. 5067 of 2020 titled “Deepak Baweja v Meenakshi Lalit @ Meenakshi Baweja” pending in the Court of Additional Principal Judge, Family Court, Gurugram to a court of competent jurisdiction at Mansa.

3. It is stated by the learned counsel for the petitioner:

i) that the marriage between the parties was solemnized on 13.4.2012 as per Hindu rites and ceremonies at Gurugram.

ii) that from the said wedlock two children namely Sourish Baweja and Kushaan Baweja were born on 15.1.2013 and 18.8.2017.

iii) that from the beginning of the marriage the petitioner was harassed, abused and subjected to mental and physical torture on account of demand of dowry. In mid 2018 the petitioner was given beatings by the respondent but later on following a Panchayat having been convened in this regard, the matter was settled in August 2018.

iv) that petitioner was again given severe beatings by respondent and his family members in July 2020.

v) that petitioner made a complaint to police u/s 406/498 IPC upon which FIR No.8 dated 11.1.2021 was got registered at PS Women (West) Gurugram against the respondent and his family members.

vi) that subsequently the petitioner alongwith her minor children shifted to Mansa and took admission in B.Ed. course in SS College of Education for Girls at Mansa. It

is further submitted that the petitioner has completed her B.Ed., and now preparing for Ph.D., to sustain herself and her minor children.

vii) That both the minor sons were also admitted to JR Millennium School, Nangal Colony, Shahid Bhagat Singh Chowk, Mansa, Punjab and are being single handedly looked after by the petitioner.

viii) that the petitioner has no source of income and for her/ her children's day to day expenses as well as educational expenses she is dependent upon her parents.

ix) that as a counterblast to the complaint made by the petitioner under Domestic Violence Act, respondent husband filed a petition under Section 13 of the HMA, as noticed above, at Gurugram. It is further submitted that the complaint under the DV Act filed by petitioner at Gurugram was withdrawn and filed before competent court at Mansa. Besides, that petitioner has also filed a petition under Section 125 Cr.PC at Mansa seeking maintenance.

x) that to further harass the petitioner, respondent also filed a petition under section 6 of the Hindu Minority and Guardianship Act, again at Gurugram for permanent custody of minor children.

xi) that one side distance between Mansa and Gurugram is almost 300 kilometers and takes about 6 hours approximately, and as such it is very difficult for the petitioner to cover such a long distance along with her two minor children to attend the said proceedings initiated by the respondent husband at Gurugram.

4. It is inter alia on these grounds that petitioner prays for transfer of the cases, as detailed in para 2 above.

i) that initially petitioner wife had filed compliant under DV Act and an application u/s 125 Cr.PC at Courts at Gurugram, however, both these petitions were dismissed as withdrawn on 28.1.2021 and 12.2.2021 respectively and now petitioner has instituted the same proceedings at Courts at Mansa.

ii) that police complaint under Section 406/498-A made by petitioner wife was later on converted into FIR bearing No. 0008 dated 11.1.2021, PS Women (West) Gurugram in which challan was presented and further proceedings are going on.

iii) that the petitioner wife has also filed a civil suit; contempt petition and a defamation complaint at Mansa.

iv) that in the petition u/s 125 Cr.PC and under DV Act, the petitioner herself had stated that “she was residing at Gurugram”.

v) that the petitioner is changing her locations and now instead of hostel at Mansa, she is stated to be residing at her uncle’s (Chacha) house at Mansa. Ld. Counsel vehemently states that in actual fact the petitioner is residing with her children in Gurugram and not Mansa.

6. Heard learned counsel for the parties and perused the paper books carefully.

7. Allegations and counter-allegations have been levelled by the parties against each other, however, that not being the subject matter of these Transfer Applications, do not require detailed mention in this order. This Court is solely concerned with the prayer made by petitioner wife for transfer of proceedings initiated by the respondent husband from Gurugram, Haryana to Mansa, Punjab. Since two minor sons, born out of the wedlock of the parties, are also suffering in this unfortunate legal battle between the parties, their convenience, in my opinion, is of paramount

importance along with that of the petitioner wife who is taking care of minor school-going children. A perusal of Annexures P8 to P12 clearly shows that the children are studying at JR Millennium School, Nangal Colony, Shahid Bhagat Singh Chowk, Mansa, Punjab. Moreover, as noticed above, several cases are already pending in Mansa, as detailed by the respondent himself in para 2 of his reply.

8. Even otherwise, 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 travelling expenses. The convenience of minor children, as already noticed above, is also being kept in mind while deciding these Transfer Applications.

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 petitions, subject to the following conditions:-

a) The petitions filed by respondent husband, as detailed in para 2 above, and pending at Courts at Gurugram, Haryana are transferred to the Courts of competent jurisdiction at Mansa, Punjab.

- b) The Id. District Judge, Gurugram is directed to transfer complete records pertaining to the aforesaid cases to District Judge, Mansa.
- c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Mansa on 12.12.2022.
- d) The District Judge, Mansa will assign the said petitions to the Court of competent jurisdiction.

- 12. The concerned Court at Mansa will make all endeavor to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.
- 13. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.
- 14. Disposed of.
- 15. A copy of this order be placed on the file of T.A. No.542/2021.

November 22,2022.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No