

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

249

TA-542-2022 (O&M)
Date of decision: 13.09.2022

Sunita**...Petitioner**

Versus

Ishwar Singh**...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Shivam Kamboj, 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 25 of the Guardians and Wards Act, 1890 as well as another petition filed under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, both pending before the Family Court, Rohtak to the competent Court of jurisdiction at Fatehabad.

Learned counsel for the petitioner has referred to the petition filed under Section 25 of the Guardians and Wards Act, 1890, wherein, in para 10, the respondent-husband has stated that the minor son lastly resided with him, however, the petitioner has taken away the custody of the child, therefore, the Court at Rohtak has the jurisdiction to try the said case.

Learned counsel for the petitioner further submits that the minor son is residing in the care and custody of the petitioner at Fatehabad, therefore, in terms of Section 9 of the Guardians and Wards Act, 1890, the jurisdiction will be at a place, where the minor child is residing and since the petitioner is the natural guardian of the minor child, it cannot be said

that she has illegally taken the custody of the child.

Learned counsel for the petitioner further submits that even petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act is liable to be transferred to Fatehabad as the petitioner has no source of income and she is to take care of minor child.

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 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), ***Rajani Kishor Pardeshi's*** case (supra) and ***N.C.V. Aishwarya's*** case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

(i) *The aforesaid petitions filed by the respondent-*

husband, pending before the Family Court, Rohtak will be transferred to the competent Court of jurisdiction at Fatehabad.

- (ii) The District Judge, Fatehabad will assign the said petitions to the competent Court of jurisdiction.*
- (iii) The Family Court at Rohtak is directed to transfer all the record pertaining to the aforesaid cases to District Judge, Fatehabad.*
- (iv) The parties are directed to appear before the trial Court at Fatehabad 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, liberty is granted to the respondent-husband to revive this petition, if he intends to contest the same, provided that:-

- (i) The respondent will clear all the arrears of maintenance amount, if any, in terms of the petition filed by the petitioner either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.*
- (ii) The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at*

Rohtak, on each and every date of hearing.

(iii) The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Rohtak, in case the respondent opts to contest this petition.

13.09.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>