

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

TA No.566 of 2022 (O&M)
Date of decision: 31.10.2022

Neha Saini

....Petitioner

Versus

Arun Saini and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S. Dhillon, Advocate
for the petitioner.

Mr. Neeraj Yadav, Advocate
for respondents No.1 and 2.

Mr. H.S. Sidhu, Advocate
for respondents No.3 to 6.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for transfer of the petitions i.e. (i) petition HMA /186 of 2022 titled as “Arun Saini versus Neha Saini” filed under Section 9 of the Hindu Marriage Act (Annexure P-3); (ii) Civil Suit No.325 of 2022 for damages titled as “Arun Saini versus Neha Saini” (Annexure P-4); (iii) Civil Suit No.381 of 2022 titled as “Arun Saini versus Neha Saini” (Annexure P-5); (iv) Civil Suit No.331 titled as “Tara Devi versus Neha Saini and others” for damages (Annexure P-6); (v) Civil Suit No.386 of 2022 titled as “Tara Devi versus Neha Saini and others” for permanent injunction (Annexure P-7); (vi) Civil Suit No.410 titled as “Tara Devi versus Neha and others” (Annexure P-8); from Amritsar to the competent Court of jurisdiction at Pathankot.

Counsel for the petitioner has argued that the marriage of the petitioner with respondent No.1 Arun Saini, was solemnized on 07.11.2016 and out of the wedlock, a son was born and he is residing in the care and custody of the petitioner at Pathankot. It is further submitted that on account of the matrimonial discord, the petitioner got registered an FIR on 18.12.2021 under Sections 323, 34 IPC at Police Station Taragarh, District Pathankot, for causing injuries to the petitioner.

Counsel for the petitioner has further submitted that when the petitioner was turned out of the matrimonial home, she has filed a petition under Section 125 Cr.P.C., for grant of maintenance for herself and for the minor son against the respondent No.1/husband before the competent Court at Pathankot, which is pending.

Counsel for the petitioner has also argued that now respondent No.1/husband has filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights (Annexure P-3) before the Family Court, Amritsar, in which notice has been issued. In order to further harass the petitioner/wife, the respondent No.1/husband has filed a civil suit (Annexure P-4) for damages against the petitioner/wife. It is further contended that the petition filed under Section 9 of the Hindu Marriage Act as well as the civil suit (Annexure P-4) were filed on the same day.

Counsel for the petitioner has drawn a reference to a suit for permanent injunction filed against the petitioner/wife and her family members that they be restrained from filing any further petition or levelling any allegation against him and the said suit is also pending

before the Civil Judge (Sr. Division), Amritsar. It is also contended that even the mother-in-law of the petitioner namely Tara Devi has also filed a suit for damages against the petitioner with similar allegations in order to harass the petitioner and she has also filed another civil suit for permanent injunction with a similar prayer as made by the respondent No.1/husband.

Counsel for the petitioner has further submitted that another civil suit has been instituted at the instance of Tara Devi, in which again a prayer is made for grant of decree of permanent injunction from dealing with house of the plaintiff Tara Devi/mother-in-law. It is also argued that on the face of it, all the civil suits are an offshoot of the matrimonial discord between the petitioner/wife and respondent No.1/husband and the same are filed just to harass the petitioner.

Counsel for the petitioner 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 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.”*

Counsel for the petitioner has also relied upon the judgment “*N.C.V. Aishwarya vs A.S. Saravana Karthik Sha*,” 2022 Live Law (SC) 627, wherein the Hon’ble Supreme Court has observed 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.”

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.

Counsel appearing for respondents No.3 to 6 has no objection if the present petition is allowed, however, counsel for respondents No.1 and 2 submits that the civil suits have been filed on account of the allegations made by the petitioner.

Be whatsoever, considering the fact that the petitioner/wife will have to bear the litigation expenses and transportation expenses 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, it is apparent that all the civil suits are an off-shoot of the matrimonial discord between the petitioner/wife and respondent No.1/husband.

Accordingly, the present petition is allowed and the petition filed under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and all the civil suits are withdrawn from the Court of Civil Judge (Sr. Division), Amritsar and are ordered to be transferred to the competent Court of jurisdiction at Pathankot, subject to the following conditions:-

- 1. The petition filed under Section 9 of the Hindu Marriage Act and all the civil suits, pending at Amritsar will be transferred to the competent Court of jurisdiction at Pathankot.*
- 2. The District Judge, Pathankot, will assign the said petition and the civil suits to the competent Court of jurisdiction.*
- 3. The Courts concerned, Amritsar are directed to transfer all the record pertaining to the aforesaid cases to District Judge, Pathankot.*
- 4. The parties are directed to appear before the trial Court, Pathankot, within a period of 01 month from today and*

respondents No.1 and 2 will pay litigation charges @ Rs.10,000/- per case to the petitioner/wife.

- 5. The Family Court, Pathankot will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.*
- 6. The Courts concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.*

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

31.10.2022
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No