

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA-578-2020 (O&M)
Date of decision: 17.08.2022

Sukhwinder Bibi

....Petitioner

Vs.

Akbar Khan

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Kriti Sharma Avasthi, Advocate
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of Civil Suit filed by the respondent-husband praying for a decree of restitution of conjugal rights under Muslim Law, pending before the Addl. Civil Judge (Sr. Divn.), Nihal Singh Wala, District Moga to the competent Court of jurisdiction at Barnala.

While issuing notice of motion, following order was passed on 10.12.2020: -

“Learned counsel states that the marriage between the petitioner and respondent was solemnized on 08.03.2015 but after some time, the petitioner was thrown out of her matrimonial home. One daughter was born on 01.01.2016 out

of this wedlock. Thereafter, a criminal case under Section 406/498-A IPC was registered against the husband. The petitioner then filed application under Section 125 Cr.P.C before the Family Court, Barnala. Now the respondent filed a suit for issuance of decree of restitution of conjugal rights before the learned Addl. Civil Judge (Sr. Divn.) Nihal Singh Wala, Moga in which notice was issued to the petitioner. The next date is 18.12.2020 for appearance.”

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, the respondent is served, however, there is no representation on his behalf and even no reply has been filed.

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 Civil Suit filed by the respondent-husband praying for a decree of restitution of conjugal rights under Muslim Law, pending before the Addl. Civil Judge (Sr. Divn.), Nihal Singh Wala, District Moga will be transferred to the competent Court of jurisdiction at Barnala.*
2. *The District Judge, Barnala will assign the said petition to the competent Court of jurisdiction.*
3. *The Addl. Civil Judge (Sr. Divn.), Nihal Singh Wala, District Moga is directed to transfer all the record pertaining to the aforesaid case to District Judge, Barnala.*
4. *The parties are directed to appear before the District Judge, Barnala within a period of 01 month from today.*

Present petition is disposed of accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

17.08.2022

vishnu

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No