

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

242

TA-827-2021 (O&M)
Date of decision: 17.08.2022

Ashima Khetarpal

...Petitioner

Versus

Dinesh Setia

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Shashikant Singh, Advocate
for the petitioner.

Respondent in person.

ARVIND SINGH SANGWAN, J. (Oral)

While issuing notice of motion on 09.09.2021, the following
order was passed:

“This petition has been filed by the wife seeking the transfer of the petition filed under Section 13(1) of the Hindu Marriage Act, 1955, bearing case No.585 of 2021, titled as “Dinesh Setia vs. Ashima Khetarpal”, pending in the Court of Additional Principal Judge, Family Court, Panipat, to the Court of competent jurisdiction at Faridabad.

The petitioner claims that she got married to the respondent on 03.08.2013 and they have been blessed with a male child. She claims that presently, she is residing with her parents at Faridabad and the distance between Panipat and Faridabad is more than 140 Kms. The petitioner further claims that she cannot properly defend the petition at Panipat.

The learned counsel representing the petitioner places reliance on the following litigations pending in

District Courts, Faridabad:- (i) FIR No.395, dated 14.08.2017, registered under Section 323/406/498-A/506 IPC, at Police Station Faridabad NIT, District Faridabad, Haryana. (ii) Under Section 125 Cr.P.C.

The learned counsel contends that it will be very difficult for the petitioner to travel on each date of hearing.

Notice of motion for 08.10.2021.”

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.”

The respondent-husband, who is appearing in person, has opposed the prayer of the petitioner-wife on the ground that though he is appearing in other cases at Faridabad as noticed above, however, he is also facing financial hardship as he has to attend the cases on multiple dates in one calendar month.

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 petition filed under Section 13(1) of the Hindu Marriage Act, pending before the Family Court, Panipat will be transferred to the competent Court of jurisdiction at Faridabad.*
- (ii) *The District Judge, Faridabad will assign the said petition to the competent Court of jurisdiction.*
- (iii) *The Family Court at Panipat is directed to transfer all the record pertaining to the aforesaid case to District Judge, Faridabad.*
- (iv) *The parties are directed to appear before the trial Court at Faridabad within a period of 01 month from today.*

However, while laying a balance to the hardship of the respondent-husband, who has to appear in multiple litigations at Faridabad on different dates, it is appropriate to directed the Family Court as well as the Courts/Illaqua Magistrates, which are ceased off with FIR case; proceedings under the Protection of Women from Domestic Violence Act, to accommodate the respondent-husband with a single date so that his appearance in all cases is not more than once in one calendar month as and when all matrimonial cases are so adjourned.

The Registrar General of this Court is directed that a copy of this order be circulated amongst all the Family Courts/other Courts/Illaqua

Magistrates dealing with different matrimonial cases in the States of Punjab and Haryana as well as Union Territory, Chandigarh with an instruction that in future they will accommodate the husband/family members with one date in all matrimonial cases, in one calendar month, when the cases are transferred to a Court as requested by the wife.

17.08.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No