

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

TA No.771 of 2022 (O&M)
Date of decision: 21.11.2022

Damanpreet Kaur

...Petitioner

v

Kulwant Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Yogesh Goel, Advocate for the petitioner.

Mr. Harish Chhabra, Advocate for respondent No.1.

Mr. Vipul Goel, Advocate and

Mr. Rajan Diwan, Advocate

For the applicant-respondents No.2, 5, 8 to 14.

NIDHI GUPTA, J.(ORAL)

CM No.15621-CII of 2022

Allowed as prayed for. Short reply on behalf of proforma respondents No.2, 5, 8 to 14 is taken on record, subject to all just exceptions.

Main Case

1. Prayer in this petition filed by petitioner wife is for transfer of the Civil Suit No.CS-934-2021 dated 08/09.11.2021 filed by respondent No.1/ father-in-law of the petitioner,titled "Kulwant Singh vs. Damanpreet Kaur and others" pending in the Court of Civil Judge (Jr. Div.), Rupnagar, to a court of competent jurisdiction at Ludhiana.

2. Learned counsel for the petitioner, *inter alia*, submits :

- i) that the marriage between the petitioner and son of respondent No.1 was solemnized on 23.11.2018 according to Sikh rites and rituals. No child was born out of this wedlock.

- ii) that on 1.4.2019, husband of the petitioner left India and went to Australia, while she was left alone in her matrimonial home. Thereafter respondent No. 1 and his family members started harassing the petitioner on one pretext or the other.
- iii) that ultimately the petitioner was turned out of her matrimonial home on 15.11.2020 and since then she is residing with her aged parents at Ludhiana at their mercy.
- iv) that the distance between her place of residence and Court at Rupnagar is 80 kms. (one side).
- v) that there is no male member in her family to accompany her to District Courts at Rupnagar.
- vi) that the petitioner has filed an application and representation to the police authorities at Ludhiana.
- vii) that the petitioner's petition under Section 125 Cr.P.C is also pending at District Courts at Ludhiana.
- viii) that the petition under Section 9 of HMA filed by husband of the petitioner has also been transferred from Ropar to Ludhiana by a Co-ordinate Bench vide order dated 26.07.2022 in TA No.749 of 2022.

It is *inter alia*, on the above said grounds that the petitioner is seeking transfer of the civil suit detailed hereinabove in para 1.

3. On the other hand, learned counsel for respondent No.1 has opposed the prayer of the petitioner and states that respondent No.1 is a senior citizen, who has recently undergone neurosurgery and has to

manage himself as his wife has already expired. He further submits that respondent No. 1 has disowned the petitioner and his son, and only wants peace in his life. Further, the suit has been filed against as many as 16 defendants, most of whom are females and except the petitioner, no one has requested for transfer of the suit. It is further stated that the Section 9 HMA petition filed by the petitioner through GPA has been rendered infructuous as the GPA has expired. He placed reliance upon judgments passed in **Smt. Akvinder Kaur vs. Sh. Gurpreet Singh, TA No.126 of 2018, decided on 15.11.2018** and **Nisha @ Manisha vs. Amarveer Yadav, TA No.299 of 2019, decided on 15.01.2020**.

4. However, learned counsel for respondents No.2, 5, 8 to 14 submits that respondents No.2, 5, 8 to 14 have no objection in case the present petition is allowed as the alleged civil suit has been filed by respondent No.1 with malafide intention in order to cause harassment to the petitioner and her family.

5. I have heard learned counsel for the parties.

By way of this petition, the petitioner is seeking transfer of CS-934-2021 dated 08/09.11.2021 filed by her father-in-law against her and 15 other members of her family for:

“Suit for permanent injunction restraining the defendants and their associates/agents from interfering in any manner into the peaceful personal life of plaintiff and not to insult humiliate and harass the plaintiff and further not to issue verbal, documentary as well as media threats to endanger the physical well-being of the plaintiff, not to file false and frivolous complaints against the plaintiff and his family members with malafide intention And further suit for mandatory

injunction directing defendants to withdraw the false and frivolous complaints filed by defendants against the plaintiff and his family members before different government agencies and further suit for mandatory injunction directing the defendants to pay the damages to the plaintiff to the tune of Rs.10 lakhs joint and separately for humiliating, harassing and defaming the plaintiff and his family members with malafide intention in connivance with each other on the basis of oral as well as documentary evidence.”

From a bare perusal of the above it becomes clear that the Civil Suit in question is a result of acute marital discord between the petitioner and her husband who is son of the present respondent No.1, which has now spilled over to the extended family as, relatives of the petitioner who are stated to not even be living in India, have been arrayed as defendants therein.

Further, from a perusal of the record it seems that the petitioner has been deserted by her husband as he is stated to have gone to Australia. Accordingly, petitioner has no one to take care of her, and even no maintenance is being paid to her to maintain herself. It is not in dispute that she is living at the mercy of her aged parents.

6. 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.”

7. 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.”* As such, in view of the preponderance of legal pronouncement in favour of the wife, Id. Counsel for the respondent can derive no benefit from the judgments relied upon by him.

8. 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.

9. 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 petition, subject to the following conditions:-

- a) The Civil Suit No.CS-934-2021 dated 08/09.11.2021 filed by respondent No.1 titled "Kulwant Singh vs. Damanpreet Kaur and others" pending in the Court of Civil Judge (Jr. Div.), Rupnagar, is transferred to a court of competent jurisdiction at Ludhiana.
- b) The Id. District Judge, Rupnagar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Ludhiana.
- c) The parties, through their counsel, are directed to appear before the **District & Sessions Judge, Ludhiana** on 16.12.2022.
- d) The District Judge, Ludhiana will assign the said petition to the Court of competent jurisdiction.

10. The concerned Court at Ludhiana 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.

11. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

Disposed of.

Pending application(s), if any, stands disposed of.

21.11.2022
ashok

(Nidhi Gupta)
Judge

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