

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

Transfer Petition No.829 of 2022 (O & M)

Date of decision: 17.11.2022

Esha Jain

.....Petitioner

vs

Pardeep Mittal and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Eklavya Gupta, Advocate
for the petitioner.

Mr. Harsh Kinra, Advocate
For respondent No.1.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955 titled "Pardeep Mittal vs. Esha Jain and another" pending in the Court of Principal Judge, Family Court, Chandigarh to a Court of competent jurisdiction at Gurugram.

2. Learned counsel for the petitioner has contended :-

- i) that the parties were married on 28.6.2020 according to Hindu rites and rituals. It is second marriage of both the parties.
- ii) that petitioner is having a girl child from her first marriage, who is around 13 years of age, who is residing with the petitioner at Gurugram.
- iii) that the petitioner-wife is living separately from the respondent-husband since 02.2.2022 and living in a rented accommodation at Gurugram.

- iv) that the petitioner is working as Professor in IILM University, Gurugram since 18.7.2022 and the respondent-husband is not paying anything to her towards maintenance.
 - v) The respondent-husband has filed the petition under Section 13 of the Hindu Marriage Act, which is pending before the Principal Judge, Family Court, Chandigarh. The petitioner has filed a complaint under the Domestic Violence Act, which is pending before the competent Court at Gurugram, in which respondent No.1-husband has already put in appearance.
 - v) that the distance between place of residence of the petitioner-wife i.e. Gurugram and the place of proceedings under Section 13 of the Hindu Marriage Act, 1955 filed by the respondent-husband, pending before the Principal Judge, Family Court, Chandigarh, is about 300 kilometers of one side.
 - vi) that since the petitioner is living with her only minor daughter at Gurugram, she is not in a position to travel alongwith her minor daughter or by leaving her daughter alone at Gurugram, to attend to the Court proceedings at Chandigarh.
3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

In response to notice of motion issued in the petition, the respondent through his counsel put in appearance to controvert the prayer made in this petition. Learned counsel for the respondent contends that the motive of the petitioner-wife, by filing the present transfer petition, is just to harass the respondent-husband.

To support his contentions, learned counsel for respondent No.1-husband has placed on record the documents Annexures R-1 to R-8/2.

Annexure R-1 is the rent petition dated 29.4.2022, titled as 'Jyoti vs. Esha Jain and another', pending in the Court of the Rent Controller, Dera Bassi. A perusal of the same reveals that the petitioner-wife recently was residing in a rented accommodation i.e. B-30, 2nd floor, Spangle Condos, Old Ambala Road, Dhakoli, Zirakpur, District SAS Nagar (Mohali), which she took on rent alongwith respondent No.1-husband-Pardeep Mittal jointly, from her *nanad* Jyoti (sister of respondent No.1). At the time of taking the premises on rent, a rent note dated 29.9.2021 was also reduced into writing in the presence of the witnesses.

Learned counsel for the petitioner has further referred to Annexure R-2, summons issued by the Rent Controller, Dera Bassi and vide Annexure R-2/1 the petitioner-wife was personally served on 02.6.2022 on the address of Dhakoli, Zirakpur. He has further referred to Annexure R-3, the summons issued by the Family Court, Chandigarh, which were also personally served upon the petitioner-wife on 19.6.2022 vide Annexure R-3/1.

Learned counsel further referred to the complaints made by the petitioner-wife i.e. Annexures R-5, R-6 and R-8. In these complaints, the petitioner-wife had leveled allegations against respondent No.1-husband, his parents and other relatives.

Learned counsel for respondent No.1-husband submits that the petitioner-wife is in the habit of leveling false allegations

against the husband and his family members and relatives and when it is already on the record of the learned Rent Controller and the Family Court at Chandigarh that the petitioner-wife is very much living in Zirakpur, which is adjacent to the Court of proceedings at Chandigarh then there is no purpose to transfer the proceedings unnecessary to the Court at Gurugram, which is at a far distance of 300 kilometers on the basis of concocted story of the petitioner-wife.

4. I have heard learned counsel for the parties and gone through the record of the case. It is not in dispute that the petitioner is working in IILM University, Gurugram since 18.7.2022. A perusal of Annexure P-3 shows that the petitioner has rented premises in Sector 51, Gurugram since 14.7.2022. Annexure P-4 are the school fee receipts of her daughter issued by Delhi Public School, Sector 45, Gurugram. Admittedly, respondent No.1-husband has already put in appearance in the Domestic Violence Act case pending before Illaqa Magistrate, Gurugram and the petitioner is now living alone in Gurugram with her daughter, who is in her care and custody and studying in Gurugram. Besides these facts, 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.”

5. Further reliance can be placed upon the judgments in **“Sumita Singh vs Kumar Sanjay”, 2002 SC 396** and **“Rajani Kishor Pardeshivs 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.”*

6. 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.

7. In view of the facts mentioned above and 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 petition filed by respondent husband under Section 13 of Hindu Marriage Act, 1955, bearing HMA/382/2022 titled as 'Pardeep Mittal vs. Esha Jain and another', pending in the Court of Principal Judge, Family Court, Chandigarh, is transferred to a Court of competent jurisdiction at Gurugram.
- b) The Id. District Judge, Chandigarh is directed to transfer complete record pertaining to the aforesaid case to District Judge, Gurugram.
- c) The parties are directed to appear before the District & Sessions Judge, Gurugram on 16.12.2022.
- d) The District Judge, Gurugram will assign the said petition to the Court of competent jurisdiction.

8. The concerned Court at Gurugram 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.

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

11. I am supported by the decisions rendered by a Co-ordinate Bench of this Court in **TA No. 1315/2022, Rohini Arora v Nitin**

Talwar; TA No. 1322 of 2022, Jaswinder Kaur v Gurvinderjeet Singh; and TA No. 1323 of 2022, Usha Rani v Karmajit Singh.

Disposed of.

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

November 17, 2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned YES/NO

Whether Reportable YES/NO