

226+102 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

TA-902-2021 (O&M)

Date of decision 16.09.2022

SHIVANI DEVI

...PETITIONER

Versus

SUMIT KUMAR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Singh Jattan, Advocate
for the applicant-petitioner.

None for the respondent.

ARVIND SINGH SANGWAN, J (Oral):

Prayer in this petition is for transfer of the petition filed by the respondent-wife under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955, bearing case No. HMA/1526/2020 titled as Sumit Kumar Vs. Shivani Devi”, pending in the Court of Additional Principal Judge, Family Court, Karnal to the competent Court of jurisdiction at Family Court Ambala.

While issuing notice of motion, following order was passed on 23.09.2021: -

“This petition has been filed by the wife seeking the transfer of the petition filed under Section 13(1) (ia)(ib) of the Hindu Marriage Act, 1955, bearing case no. HMA/1526/2020, titled as “Sumit Kumar vs. Shivani Devi”, pending in the Court of Additional Principal Judge, Family Court, Karnal, to the Court of competent jurisdiction at Ambala.

The petitioner claims that she got married to the respondent on 02.09.2006 and they have been blessed with three female children, who are residing with the petitioner. She claims that presently, she is residing with her parents at Ambala and the distance between Karnal and Ambala, is more than 65 Kms. The

petitioner further claims that she cannot properly defend the petition at Karnal.

The learned counsel representing the petitioner places reliance on the pendency of the petition filed under Section 125 Cr.P.C., at Ambala. The learned counsel contends that it will be very difficult for the petitioner to travel on each date of hearing. Notice of motion for 02.11.2021.

The liberty is granted to the petitioner to serve the respondent through his counsel Sh. Yashwant Singh Rathore, Ms. Sudha Singh, Kr. Yuvraj Singh Rathore, at District Courts, Karnal. Dasti also.”

Learned counsel for the petitioner submits that the petitioner is residing at Ambala with three minor daughters and she is take care of them and she has already filed a petition under Section 125 Cr.P.C. for grant of maintenance and respondent has not paid.

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 behavioral 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.”

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 petition filed under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, pending before the Family Court, Karnal will be transferred to the competent Court of jurisdiction at Ambala.*
2. *The District Judge, Ambala will assign the said petition to the competent Court of jurisdiction.*
3. *The Family Court, Karnal is directed to transfer all the record pertaining to the aforesaid case to District Judge, Ambala.*
4. *The parties are directed to appear before the District Judge, Ambala within a period of 01 month from today.*

Present petition is disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

16.09.2022
monika

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No