

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

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TA-915-2021 (O&M)
Date of decision: 24.08.2022

Aarti

...Petitioner

Versus

Dharminder Dhanpati

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. G. P. S. Pathania, Advocate
for the petitioner.

Mr. Arjun Veer Sharma, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

While issuing notice of motion on 27.09.2021, the following
order was passed:

“...This petition has been filed by the wife seeking the transfer of the petition filed under Section 13 of the Hindu Marriage Act, 1955, bearing case No.DMC/273/2021, titled as "Dharminder Dhanpati vs. Aarti", pending in the Court of Principal Judge, Family Court, Phillaur, District Jalandhar, to the Court of competent jurisdiction at Pathankot.

The petitioner claims that she got married to the respondent on 05.01.2014. She claims that presently, she is residing with her parents at Pathankot and the distance between Phillaur, District Jalandhar and Pathankot, is more than 150 Kms. The petitioner further claims that she cannot properly defend the petition at Phillaur, District Jalandhar.

The learned counsel representing the petitioner places reliance on the following litigations pending in District Courts, at Pathankot:- (i) COMA/72/2021, under Section 12 of the Protection of Women from Domestic Violence Act, 2005. (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 03.11.2021....”

Learned counsel for the petitioner submits that the respondent-husband has left the country and is residing abroad, therefore, it is very difficult to serve him with notices, though at the time when he filed the aforesaid petition under Section 13 of the Hindu Marriage Act, he was in India.

Learned counsel for the petitioner further shows that a perusal of the order 20.12.2021 would show that when the notice was issued to the counsel representing the respondent-husband before the trial Court, the same was received back with the report that no such advocate, namely Ms. Sunpreet Kaur Lamba, is registered with the District Bar Association, Jalandhar.

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.”

Learned counsel for the respondent-husband has opposed the prayer of the petitioner-wife. It is submitted that even petition under Section 13 of the Hindu Marriage Act was filed by the respondent through his power of attorney, however, it is not disputed that the respondent is now

residing abroad.

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) and ***Rajani Kishor Pardeshi***'s case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

- (i) *The petition filed under Section 13 of the Hindu Marriage Act, pending before the Family Court, Camp Court at Phillaur will be transferred to the competent Court of jurisdiction at Pathankot.*
- (ii) *The District Judge, Pathankot will assign the said petition to the competent Court of jurisdiction.*
- (iii) *The District Judge, Jalandhar is directed to transfer all the record pertaining to the aforesaid case to District Judge, Pathankot.*
- (iv) *The parties are directed to appear before the trial*

Court at Pathankot within a period of 01 month from today.

(v) *The Courts concerned, where the cases are pending between the parties, will accommodate them with one date in a calendar month.*

24.08.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>