

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

Transfer Application No. 915 of 2022

Date of decision: 09.12.2022

Sukhwinder Kaur

.....Petitioner

vs

Michael Unvith Bhatoe

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Pranav Chamoli, Advocate
for the petitioner.

Mr. Angad Chahal, Advocate
For the respondent.

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 (for short 'the Act') titled "Michael Unvith Bhatoe vs. Sukhwinder Kaur" pending in the Court of Principal Judge, Family Court, Amritsar to a Court of competent jurisdiction at Hoshiarpur.

2. Learned counsel for the petitioner has contended :-

- i) That the parties were married on 11.10.2018 according to Sikh rites and rituals.
- ii) That a girl child was born out of this wedlock, who is around 2 years of age and is in the care and custody of the respondent. It is also submitted that due to miscarriage, one of the twins had immediately died.

- iii) That the petitioner-wife is living separately from the respondent-husband from 17.3.2021. She is living with her parents at their mercy at Hoshiarpur.
- iv) That the petitioner is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband, who is working in the District Education Office, Elementary Education, Amritsar, 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, Amritsar.
- vi) The proceedings arising out of petitions (1) under Section 12 of the Protection of Women from Domestic Violence Act, 2005 are pending at Amritsar because at that time, when the same was filed, the petitioner was living at Amritsar; and (2) FIR No.0044 dated 06.5.2022, under Sections 498-A and 406 IPC, registered at Police Station Chabbewal, District Hoshiarpur, filed by the petitioner-wife, is pending at Hoshiarpur.
- vii) that the distance between place of residence of the petitioner-wife i.e. Hoshiarpur 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, Amritsar, is about 160 kilometers of one side.
- viii) that there is no able bodied person in the family of the petitioner, who can accompany her to the Court of proceedings at Amritsar. The father of the petitioner is aged about 62 years and suffering from age related ailments, especially arthritis affecting to his knee joints and has not been advised by the doctor to travel. The mother of the petitioner is also old aged of 59 years and suffering from age related ailments, especially coronary artery disease and severe diabetes mellitus.

3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

Upon notice of motion, respondent has put in appearance through counsel and filed reply in the matter to contest the contentions raised by the petitioner in the present petition.

Ld. Counsel for the respondent has taken the following pleas to contest the contentions of the petitioner, as also mentioned in his reply :-

That the petitioner wife is not residing alongwith her parents and she has given this address only to harass the respondent-husband and the allegations leveled in this petition against the husband and his family members are totally false and baseless and it is only concocted story made by the petitioner.

It is also stated by ld. Counsel for the respondent that at present he is unemployed and is living with his aged parents and at their mercy.

It is also vehemently denied that the respondent-husband or his family members either harassed the petitioner-wife either mentally or physically ever, rather it is the petitioner-wife, who is having cunning mind and leveling false allegations and trying to torture the respondent-husband and his family members.

Even the contents made in the complaint, moved to the police and the contents of the FIR (mentioned above) itself are totally vague as the same are created by her in furtherance of common intention alongwith his family members, rather the petitioner was not

subjected to any torture or harassment of any kind at the hands of respondent-husband or his family members.

It is the respondent-husband, who made all his best efforts to reconcile the matter but the petitioner-wife remained always adamant on her own and on instigation of her family members.

It is also contended that just to harass the respondent and his family members, the present petition has been filed to transfer the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act (detailed in para 1), pending in the Court of Principal Judge, Family Court, Amritsar to a Court of competent jurisdiction at Hoshiarpur because it is matter of record that at the time of filing of the petition under the Domestic Violence Act, the resident address mentioned by the petitioner was of Amritsar. The present application is nothing but an afterthought to cause prejudice to the respondent.

As far as traveling of 160 kilometers is concerned, it is submitted by learned counsel for the respondent that Amritsar and Hoshiarpur are connected by a well maintained highway and GT road and therefore traveling between these two cities is very easy and convenient as it takes around one and half hour only to complete the journey.

4. I have heard learned counsel for the parties. There is no doubt that it has been submitted that the minor child is living with the respondent husband and he is unemployed living at the mercy of his parents, yet, as noticed hereinabove, the connectivity between Amritsar and Hoshiarpur is good. Even investigation against the respondent in FIR 0044 dated 6.5.2022 is pending at Hoshiarpur. Moreover, 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/414/2021 titled as 'Michael Unvith Bhatoe vs. Sukhwinder Kaur', pending in the Court of Principal Judge, Family Court, Amritsar is transferred to a Court of competent jurisdiction at Hoshiarpur.
- b) The Id. District Judge, Amritsar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Hoshiarpur.
- c) The parties are directed to appear before the District & Sessions Judge, Hoshiarpur on 23.12.2022.
- d) The District Judge, Hoshiarpur will assign the said petition to the Court of competent jurisdiction.

8. The concerned Court at Hoshiarpur 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.

December 09, 2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	YES/NO
Whether Reportable	YES/NO