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

TA-944-2021 (O&M)
Date of decision: 19.07.2022

Harwinder Kaur **...Petitioner**

Versus

Kulwinder Saini **...Respondent**

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Harish Goyal, Advocate
for the petitioner.

Mr. Ankit Chowdhary, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. *(Oral)*

CM-8430-CII-2022

Prayer in this application is for preponing the date of the main case which is fixed for 03.09.2022.

For the reasons stated in the application, the same is allowed. Let the main case be preponed and taken up today itself.

TA-944-2021 (O&M)

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled as ***Kulwinder Saini vs. Harwinder Kaur***, pending before the Family Court, Hoshiarpur to the competent Court of jurisdiction at Chandigarh.

Learned counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner has filed a petition under Section 125 Cr.P.C. for grant of maintenance as well as a petition under the Protection of Women from Domestic Violence Act at Chandigarh, which are pending, and

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as a counter-blast to the same, the respondent-husband has filed the present petition under Section 13 of the Hindu Marriage Act at Hoshiarpur in order to harass the petitioner. It is further submitted that the petitioner is facing great difficulty in prosecuting the said case, as there is a distance of about 140 Kms between Chandigarh and Hoshiarpur.

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 respondent-husband has opposed the prayer of the petitioner-wife.

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

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that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner-wife will have to bear the litigation expenses and transportation expenses and in view of the fact that in case notice of motion is issued, even the respondent/husband has to bear the litigation expenses and in also in view of the judgments rendereed 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, Hoshiarpur will be transferred to the competent Court of jurisdiction at Chandigarh.

(ii) The District Judge, Chandigarh will assign the said petition to the competent Court of jurisdiction.

(iii) The Family Court at Hoshiarpur is directed to transfer all the record pertaining to the aforesaid case to District Judge, Chandigarh.

(iv) The parties are directed to appear before the trial Court at Chandgiarh within a period of 01 month from today.

However, liberty is granted to the respondent-husband to revive this petition, if he intends to contest the same, provided that:-

(i) The respondent will clear all the arrears of maintenance amount, if any, in terms of the petition filed by the petitioner either under Section 125 C r.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.

(ii) The respondent will file an affidavit giving

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undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Hoshiarpur, on each and every date of hearing.

(iii) The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Hoshiarpur, in case the respondent opts to contest this petition.

19.07.2022 **(ARVIND SINGH SANGWAN)**
JUDGE

Waseem Ansari

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*

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