

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

**1. Transfer Application No. 990 of 2022
Date of decision: 21.11.2022**

Harvinder Kaur

.....Petitioner

vs

Balwinder Singh and another

.....Respondents

2. Transfer Application No. 992 of 2022

Harvinder Kaur and others

.....Petitioners

vs

Balwinder Singh and another

.....Respondents

3. Transfer Application No.1047 of 2022

Roselie Saini (minor) through her mother Harvindere Kaur

.....Petitioner

vs

Gurcharan Singh (through legal heirs) and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. B.S. Jaswal, Advocate
for the petitioners in all cases.

Mr. Manbir Singh Batth, Advocate
for respondent No.1 (in T.A.-990 and 992 of 2022)
for respondents No.1(i), (ii) and 2 (in T.A. No.1047 of
2022)

NIDHI GUPTA, J.

Vide this common order all the afore-stated three
Transfer Applications will be disposed of as all these petitions are
connected, and the grounds/submissions made by counsel in all three
are similar.

1. Prayers made in the aforesaid petitions are as under :-
 - i) in Transfer Application No.990 of 2022, petitioner-wife is seeking transfer of the petition under Section 7 and 12 of the Guardian & Wards Act, filed by her vide GW/23/2022 dated 02.4.2022 titled as 'Harvinder Kaur vs. Balwinder Singh and another' for getting the custody of her minor daughter, namely, Rupinder Saini aged about 09 years, pending before the District Judge, Family Court at Shaheed Bhagat Singh Nagar to the Court of competent jurisdiction at Patiala.
 - ii) in Transfer Application No.992 of 2022, petitioners are seeking transfer of Civil Suit No.862/2019 dated 10.10.2019 (annexed with this petition as Annexure P-1) filed by respondent No.1-Balwinder Singh, titled as 'Balwinder Singh vs. Harvinder Kaur and others',

pending before the Civil Judge (Jr. Divn.), at Shaheed Bhagat Singh Nagar to the Court of competent jurisdiction at Patiala.

- iii) in Transfer Application No.1047 of 2022, petitioner-Roselie Saini (minor) represented by her mother Harvinder Kaur is seeking transfer of the Civil Suit No.216/2022 dated 02.4.2022 (annexed with this petition as Annexure P-3) filed by her, titled as 'Roselie Saini vs. Gurcharan Singh and others', pending before the Civil Judge (Sr. Divn.) at Shaheed Bhagat Singh Nagar to the Court of competent jurisdiction at Patiala.

2. Learned counsel for the petitioners submits that:-

- i) that petitioner-Harvinder Kaur and respondent-Balwinder Singh were married on 12.1.2011 according to Sikh rites and rituals.
- ii) that two daughters were born out of this wedlock, out of which one girl child, namely, Rupinder Kaur, aged about 09 years, is residing with the respondent-Balwinder Singh; and the other child, namely, Roselie Saini (petitioner in Transfer Application No.1047 of 2022) aged about 04 years is living with her mother-Harvinder Kaur.
- iii) that petitioner-wife-Harvinder Kaur is unemployed and living separately from the respondent-husband-Balwinder Singh, at the mercy of her parents at her maternal home in Patiala.
- iv) that the petitioner-wife is having no source of income and is totally dependent upon her parents and the respondent-husband-Balwinder Singh, is having landed property and good amount in his bank accounts as he remained abroad

for 13 years, but is not paying anything to her and the minor daughter Roselie Saini towards maintenance.

- v) It is submitted by Id. Counsel for the petitioner(s) that there are several cases already pending in Patiala in which the respondent-husband is already appearing, the details of which are as under :-
- a) Civil Suit No.675/2021, titled as 'Harvinder Kaur vs. Balwinder Singh', pending before Civil Judge (Sr. Divn.), Patiala. Vide this suit for declaration the petitioner has sought a declaration to the effect that the order of divorce dated 09.11.2020 granted by the Judge Burchaat of the Federal Circuit Court of Australia in the marriage between Balwinder Singh and Harvinder Kaur in File No.PDGC806/2020 annulling the marriage between the parties is illegal.
 - b) Application under Section 125 Cr.P.C. for grant of maintenance, titled as 'Roselie Saini (through her natural guardian/mother) vs. Balwinder Singh', pending before the Principal Judge, Family Court, Patiala.
 - c) FIR No.0061 dated 02.4.2022, under Sections 406, 494 and 498-A IPC, registered at Police Station Civil Lines, Patiala.
- vi) that the distance between place of residence of the petitioner-wife i.e. Patiala and the place of proceedings of the cases pending in Nawanshahar is about 130 kilometers-one side.
- vii) that petitioner-Harvinder Kaur is having four years old daughter with her and father of the petitioner-wife is an old man and there is no able male person in the family who can accompany her to the court of proceedings at Nawanshahr. It is further submitted that the respondent-husband-Balwinder Singh is also appearing before the

Courts at Patiala and contesting the civil suit for declaration; application under Section 125 Cr.P.C.; and FIR No.0061 dated 02.4.2022 (detailed above).

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

4. In response to the notice of motion issued, respondent-husband-Balwinder Singh has filed the reply. It is submitted by Id. Counsel for the respondent that the marriage between the respondent-husband and petitioner-Harvinder Kaur was solemnized on 12.1.2011 and out of the said wedlock two female children were born, namely, Rupinder Saini and Roselie Saini. After the marriage, petitioner-wife-Harvinder Kaur and respondent-husband-Balwinder Singh migrated to Australia on the basis of work visa and while residing there, some differences erupted between them and litigations started. It is further submitted that the petitioner-Harvinder Kaur while living in Australia expressed her inability to take care of her elder minor daughter, namely, Rupinder Saini and requested the respondent-husband and his family members to take care of her. It is submitted that for this purpose the petitioner-wife had also given her consent letter, appended as Annexure R-1 with the reply of the respondent-husband, thereby appointing the Mrs. Kulwant Kaur mother of the respondent-husband (dadi) as caretaker of her elder daughter Rupinder Saini. Since around 10 years, the grandmother Kulwant Kaur is taking care of minor child Rupinder Saini at Nawanshahr. Rupinder Saini is studying in Cambridge International School, Nawanshahr and her half yearly examination report card as Annexure R-2 has also been annexed with

the reply. It is submitted by learned counsel for the respondent-husband that in the Civil suit 862 of 2019, filed by the respondent-husband-Balwinder Singh at Nawanshahr, the petitioner-wife is already pursuing the proceedings since the year 2019 and now after three years she suddenly wants to transfer the same from SBS Nagar to Patiala despite the fact that minor girl child is studying at Nawanshahr and his aged mother, who is 78 years of age, is taking care of the minor daughter; and in case the suit is transferred to Patiala, then it would be very difficult for the respondent-husband and his old aged mother to travel to Patiala on each date of hearing and unnecessarily the study of minor girl would also be affected. It is further submitted that in the proceedings pending in the Court at Nawanshahr, the petitioners are already appearing through their counsel and their personal appearance is not required at any point of time except at the time of recording of evidence.

5. I have heard learned counsel for the parties. It is not in dispute that three cases are already pending in the concerned Courts at Patiala, where the respondent is putting in appearance. It is further not denied that the petitioner is residing with her old parents at their mercy and has her minor daughter to look after her, and no maintenance is being paid to them by the respondent-husband. Moreover, it has been vehemently denied that vide Annexure R-1 the petitioner-wife had handed over custody/ or appointed Mrs. Kulwant Kaur as caretaker of her elder daughter. It is on record that as per Australian law it is mandatory that a caretaker -chaperon accompany a minor child during travel, and as her minor daughter Rupinder Saini was travelling from

Australia to India, Mrs. Kulwant Kaur was only given permission to act as Caretaker for purposes of travel. It is also pertinent that the petitioner wife has filed petition under the Guardian and Wards Act to get custody of her elder daughter Rupinder Saini.

6. Even otherwise, 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.”

7. 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.”

8. 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 from her place of residence as well as bearing of the litigation charges and travelling expenses.

9. 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 petitions, subject to the following conditions:-

- a) The petitions, mentioned in para 1 of this judgment, filed and pending in the Courts of jurisdiction at Nawanshahr (S.B.S. Nagar) are ordered to be transferred to the Court of competent jurisdiction at Patiala.
- b) The Id. District Judge, Shaheed Bhagat Singh Nagar is directed to transfer complete records pertaining to the aforesaid cases to District Judge, Patiala.

c) The parties are directed to appear before the District & Sessions Judge, Patiala.

d) The District Judge, Patiala will assign the said petitions/suit to the Court of competent jurisdiction.

10. The concerned Court at Patiala will make all endeavour to refer the cases before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.

11. The Courts concerned, where the litigations are pending between the parties, will accommodate them with one date in one calendar month.

12. I am supported in the above 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.

Photocopy of this order be placed on the files of connected cases.

November 21,2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned

YES/NO

Whether Reportable

YES/NO