

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

Transfer Application No. 1029 of 2021

Date of decision: 16.11.2022

Amandeep Kaur

.....Petitioner

vs

Sukhjit Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

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

None 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 titled "Sukhjit Singh vs. Amandeep Kaur" pending in the Court of Principal Judge, Family Court, Gurdaspur, Camp Court, Batala to a Court of competent jurisdiction at Bathinda.

Today neither respondent nor anybody on his behalf is present in the Court. Accordingly, this petition is being decided in his absence.

2. Learned counsel for the petitioner has contended :-

- i) that the parties were married on 24.9.2017 according to Sikh rites and rituals.

- ii) that one male child, aged about 2-½ years was born out of this wedlock, who is in the care and custody of the petitioner.
- iii) that the petitioner-wife is living separately from the respondent-husband since 28.3.2021 and living with her parents at their mercy at Bathinda.
- iv) that the petitioner is doing a job for her own and for survival of her son, and the respondent-husband 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, Gurdaspur, Camp Court, Batala.

The proceedings arising out of petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005; filed by the petitioner-wife are pending in the Courts having competent jurisdiction at Bathinda.

- v) that the distance between place of residence of the petitioner-wife i.e. Bathinda 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, Gurdaspur, Camp Court, Batala, is about 221 kilometers on one side.
- vi) that there is no able bodied person in the family of the petitioner, who can accompany her to the Court of proceedings at Gurdaspur, Camp Court, Batala.

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

In response to notice of motion issued, the respondent appeared earlier and submitted his reply dated 20.10.2022 on 20.10.2022.

In the reply, the respondent disclosed that the petitioner has concealed the material facts from this Court. He submitted that the petitioner was earlier married twice before marrying with the respondent. Through the panchayat, she got divorce with regard to her first marriage and the second marriage was dissolved by decree of divorce from the Court of Additional District Judge, Bathinda. This marriage with him was her third marriage. He further disclosed that petitioner had no child from her previous marriages and from the present wedlock she gave birth to a girl child on 01.11.2018, who unfortunately died and thereafter she gave birth to a baby boy, who is living in her care and custody. He also disclosed in his reply that he was also earlier married but her wife got expired on 15.11.2016 after a long illness and he is having a son from that first marriage, who is married and settled abroad. The respondent apprehends that petitioner alongwith her family members with the help of bad elements could harm him and requests that in case the present petition is allowed, the petition filed by him, which is the subject matter in the present petition, may be transferred to any other district i.e. Jalandhar, Ludhiana or Ferozepur.

4. I have heard learned counsel for the petitioner and perused the reply filed by the respondent.

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/194/2021 titled as 'Sukhjit Singh vs. Amandeep Kaur', pending in the Court of Principal Judge, Family Court, Gurdaspur, Camp Court, Batala is transferred to a Court of competent jurisdiction at Bathinda.
- b) The Id. District Judge, Gurdaspur is directed to transfer complete record pertaining to the aforesaid case to District Judge, Bathinda.
- c) The parties are directed to appear before the District & Sessions Judge, Bathinda on 23.12.2022.
- d) The District Judge, Bathinda will assign the said petition to the Court of competent jurisdiction.

8. The concerned Court at Bathinda 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.

November 16, 2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

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