

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

TA No. 1036/2022(O&M)

Date of decision: November 30,2022.

Kavita

.....Petitioner

v

Ravi Kant

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Raj Kapoor Malik, Advocate for the petitioner

Mr. Himanshu Bansal, Advocate for the respondent.

Nidhi Gupta, J.(Oral)

CM 15549-CII of 2022:

This application is for placing on record the written statement filed on behalf of the respondent. Application is allowed and written reply is taken on record.

Main Case:

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 from the Court of Principal Judge, Family Court, Panipat to a court of competent jurisdiction at Kaithal.

2. It is stated by the learned counsel for the petitioner:

i) that the marriage between the parties was solemnized on 6.3.2011 according to Hindu rites and rituals. Two male

children born out of this wedlock on 13.12.2011 and 14.8.2013 respectively.

ii)that at the time of marriage parents of the petitioner had given sufficient dowry, however, respondent and his family members used to torture her and used to put demand of cash and kind. She was treated in a very cruel and rude manner. Ultimately, she was turned out of the matrimonial home on 2.7.2022. Both the children were also snatched away from her at that time.

iii) that the respondent has filed the petition under Section 13 of HMA with the motive to harass her.

iv) that the petitioner has also filed a complaint u/s 12 of the Domestic Violence Act, 2005 the same being COMA Case No. 96 of 2022 in which the NDOH is 25.1.2023 before the Id. CJM, Kaithal.

v) that in addition to the above, petitioner has also filed a maintenance petition u/s 125 Cr.PC being MNT No. 157 of 2022 pending before the Id. Principal Judge, Family Court at Kaithal for 30.11.2022.

vi) that the petitioner has also filed GW case no. 48 of 2022 titled as 'Kavita vs. Ravi Kant' under the Guardian & Wards Act for custody of her children which is pending at Kaithal for 30.11.2022.

vii) that no maintenance either in the complaint u/s 12 of the DV Act nor in maintenance petition has been granted to her till date and as such she is financially dependent upon her parents.

viii) that petitioner is less educated and unaware of the court proceedings and hence every time she has to attend the Court proceedings at Panipat in the company of some family member.

ix) that the distance between Village Titram, Tehsil and District Kaithal and Panipat is about 90 kms.

3. The learned counsel for the respondent husband states that petitioner has made materially false averments in a deliberate manner to extract an unjust favourable order of transfer by concealing true facts. It is denied that the petitioner was turned out of the matrimonial home, rather she is stated to have deserted the matrimonial home herself on 5.6.2022, and had initially taken the children with her who were then sent back on 2.7.2022 with her brother. Ld. Counsel further states that no notice has been received by the respondent in any of the aforementioned cases u/s 125 CrPC, or DV Act, or GW Act stated to be pending in Kaithal.

4. Heard learned counsel for the parties and perused the Transfer Petition as well as the written reply filed by respondent. A perusal of the record shows that the petitioner-wife is less-educated and is living at the mercy of her family/ parents. Respondent has been unable to show that he is paying any maintenance to the petitioner. Moreover, there are three other cases already pending at Kaithal.

5. 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.”

6. Further reliance can be placed upon the judgments in “**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 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.”

7. 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.

8. After hearing the learned counsel for the parties and in view of 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 the HMA is transferred from the Court of Principal Judge, Family Court, Panipat to a court of competent jurisdiction at Kaithal.

b) The Id. District Judge, Panipat is directed to transfer complete record pertaining to the aforesaid case to District Judge, Kaithal.

c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Kaithal on 23.12.2022.

d) The District Judge, Kaithal will assign the said petition to the Court of competent jurisdiction.

8. The concerned Court at Kaithal 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.

Disposed of.

November 30, 2022.
Joshi

(Nidhi Gupta)
Judge