

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

**TA 783/2019 (O&M) &
CRM-M 38172/2019 (O&M)**

Date of decision: 06 .12.2022

Raj Kumar Arya

.....Petitioner

Vs.

Priti Arya

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms.Sukhpreet Kaur, Advocate for the petitioner.
Ms.Anmol, Advocate for the respondent

Nidhi Gupta,J.

This common order shall dispose of TA 783/2019 and CRM-M 38172/2019; both filed by the petitioner husband. In TA 783/2019 prayer is for transferring petition under Section 13 of the Hindu Marriage Act bearing case no. DMC/1005/13.10.2018 titled as 'Raj Kumar Arya v Priti Arya' from the Court of Addl. Principal Judge, Family Court, Patiala to a court of competent jurisdiction at Jalandhar.

Further, petitioner husband in CRM-M 38172/2019 is seeking transfer of Revision petition bearing No. CRR/2625/19 titled as 'Raj Kumar Arya v Priti Arya' from the Court of Addl. Sessions Judge, Patiala to a court of competent jurisdiction at Jalandhar. Further prayer is to transfer the complaint case, under Domestic Violence Act, 2005, bearing No. COMA/5911/17 dated 13.12.2017 titled as 'Priti Arya v Raj Kumar Arya'; and subsequent Execution Petition No.

CRM/2696/19 titled as 'Priti Arya v Raj Kumar Arya' from the Court of JMIC Patiala to court of competent jurisdiction at Jalandhar.

A perusal of the averments made in petition reveals that marriage between the parties was solemnized on 19.5.2006 as per Hindu rites and ceremonies. Out of this wedlock two sons were born, who are now aged 12 years and 8 years respectively and living with the petitioner at Jalandhar. It is further alleged that since the day of marriage, respondent wife is quarrelsome and short-tempered lady who used to quarrel with the petitioner on petty matters and used to cause mental and physical harassment to him. She is alleged to have assaulted the petitioner in August 2008, due to which he remained admitted in Seth VC Gandhi General Hospital, Mumbai. It is then alleged that to save her skin, respondent wife filed a complaint under the Domestic Violence Act against the petitioner, which was subsequently compromised between the parties. Thereafter, the petitioner got a job at Thapar University, Patiala and the parties remained there from 2014–2018. However, even while living with the petitioner in the same house provided by the Thapar University at Patiala, the respondent filed another false complaint under the Domestic Violence Act against the petitioner at Patiala. It is averred that in September 2018 petitioner got transferred to Jalandhar, but respondent did not join his company at Jalandhar and thus deserted the petitioner and left matrimonial home in last week of September while leaving the minor children also. Upon this, petitioner filed a petition u/s 13 of the HMA at Patiala on 12.10.2018 for grant of decree of divorce, of which transfer is now being sought.

Learned counsel for the petitioner submits that petitioner is currently living and working in Jalandhar at Dr. BR Ambedkar National Institute of Technology. The school going children are also living with him. The children

are stated to be studying in 7th and 4th standard respectively at Cambridge International School, Jalandhar and being taken care of by the petitioner. It is submitted that the distance between Jalandhar and Patiala is around 150 kilometers one way and it takes about 4 hours to travel on one side, and as the petitioner is working in Jalandhar as also has the two minor children to look after, he is unable to travel for the frequent dates in the cases pending in Patiala. It is further informed that the respondent has filed a petition under the G&W Act at Jalandhar seeking custody of the children. The petitioner is also stated to be regularly paying Rs.15,000/- p.m. to respondent as maintenance under the DV Act and is also ready to pay litigation expenses to the respondent to enable her to attend court proceedings at Jalandhar. In these circumstances, prayer is for transfer of the cases, as noticed above, from the Courts at Patiala to Jalandhar.

On the other hand, learned counsel for the respondent vehemently opposes the prayer made in both these petitions and submits that the respondent is an orphan and has no source of income. The distance both ways between Patiala and Jalandhar is 300 km which she cannot traverse by herself, and there is no one to travel with her. On a query by the Court, learned counsel informs that the respondent is a qualified MA, however, is unemployed. It is further submitted that the petitioner is in arrears of Rs.9 lakhs as maintenance.

I have heard learned counsel for the parties.

I find merit in the submissions made on behalf of the petitioner – husband. It is not in dispute that the petitioner is working in Jalandhar, and is simultaneously looking after and educating his two minor children who are in his care and custody. It is therefore understandable that it will be most inconvenient and difficult for the petitioner to travel to Patiala frequently for the above mentioned cases which are pending there.

On the other hand, the respondent though qualified, is admittedly not working and is stated to have no source of income. Moreover, the petition filed by the respondent under the Guardian and Wards Act, is also admittedly pending in Jalandhar.

This Court is well aware of the preponderance of law in cases of transfer emanating from matrimonial disputes is in favour of the wife. However, in certain similar cases the Hon'ble Supreme Court, as well as this Court have refused relief to the wife. One such case which may be referred to is: **(2006) 9 SCC 197 'Anindita Das Vs. Srijit Das'** wherein Hon'ble Supreme Court under similar circumstances dismissed the wife's application seeking transfer of petition filed by the husband. Reference in this regard may also be made to two cases of this Court where, in similar circumstances this Court had dismissed transfer applications filed on behalf of the wife. These are: **TA no. 126 of 2018 Smt. Akhwinder Kaur Vs. Sh. Gurpreet Singh;** and **TA No. 299 of 2019 Nisha alias Manisha vs. Amarveer Yadav.**

Accordingly, in view of the facts and circumstances of the present case as noted above, as also the precedents of Case law as above, I hereby allow the present petitions being TA 783/2019 and CRM-M 38172/2019; subject to the following conditions:-

- a) The following petitions pending in Courts concerned at Patiala are transferred to court of competent jurisdiction at Jalandhar:-
 - (i) Petition u/s 13 HMA titled Raj Kumar Arya v Priti Arya, bearing case no. DMC/1005/13.10.2018;
 - (ii) Revision petition bearing No. CRR/2625/19 titled as 'Raj Kumar Arya v Priti Arya'
 - (iii) complaint case, under Domestic Violence Act, 2005, bearing No. COMA/5911/17 dated

13.12.2017 titled as 'Priti Arya v Raj Kumar Arya'

(iv) Execution Petition No. CRM/2696/19 titled as 'Priti Arya v Raj Kumar Arya'

b) The Id. District Judge, Patiala is directed to transfer complete record pertaining to the aforesaid cases to District Judge, Jalandhar.

c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Jalandhar on 10.1.2023

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

8. The concerned Court(s) at Jalandhar 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.

(Nidhi Gupta)
Judge

06.12.2022
Joshi

Whether speaking/reasoned

Yes

Whether reportable

Yes/No