

TA-39-2022
Date of decision 09.08.2022

DEEPI WALIA

....PETITIONER

Versus

GURSHARAN SINGH ALIAS DOLLAR

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rahul Garg, Advocate for
Mr. Naveen Batra, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J (Oral):

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, pending before the Family Court, Jalandhar to the competent Court of jurisdiction at Hoshiarpur.

As per office report, notice to respondent could not served as the respondent is not residing on the given address.

However, a perusal of the order dated 02.02.2022, shows that the trial Court is directed to adjourn the case beyond the date fixed. It is a deemed service on the counsel for the respondent-husband.

While issuing notice of motion, following order was passed on 02.02.2022: -

“The present transfer application has been filed by the wife thereby seeking transfer of petition under Section 13 of Hindu Marriage Act filed at the instance of the respondent/husband, which is pending in Family Court, Jalandhar, to Court of competent jurisdiction at Hoshiarpur.

It is submitted by the learned counsel for the applicant that the applicant is residing at Hoshiarpur, where she has already filed a petition under Domestic Violence Act as well as civil suit for injunction.

It is submitted that applicant is not having any independent source of income. Even, distance between Jalandhar and Hoshiarpur is about 55 kms. As such, it is difficult for her to pursue the litigation thrust upon her by the respondent.

Notice of motion for 21.03.2022.

Trial Court shall adjourn the matter beyond the date fixed by this Court.”

Learned counsel for the petitioner submits that the petitioner has also filed a petition under Domestic Violence Act as well as praying for a decree of judgment. It has further been submitted that the petitioner is not having any independent source of income and the distance between Jalandhar and Hoshiarpur is about 55 kms and, therefore, it is difficult for the petitioner to pursue the said petition at Jalandhar and the same be transferred to 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 has further relied upon N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, 2022 Live Law (SC) 627, wherein the Hon'ble Supreme Court held as under: -

“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 behavioral 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.

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.”

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 that the petitioner-wife will have to bear the litigation expenses and transportation expenses and in view of the judgments in 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 deem it appropriate to allow the present petition, subject to the following conditions:-

1. *The petition filed under Section 13 of the Hindu Marriage Act, pending before the Family Court, Jalandhar will be transferred to the competent Court of jurisdiction at Hoshiarpur.*
2. *The District Judge, Hoshiarpur will assign the said petition to the competent Court of jurisdiction.*
3. *The Family Court, Jalandhar is directed to transfer all the record pertaining to the aforesaid case to District Judge, Hoshiarpur.*
4. *The parties are directed to appear before the District Judge, Hoshiarpur within a period of 01 month from today.*

Present petition is disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

09.08.2022
monika

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No