

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA-1248-2021 (O&M)
Date of decision: 22.08.2022

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....Petitioner

Vs.

Sagar Sharma

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

None for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 9 of the Hindu Marriage Act, pending before the Family Court, Amritsar to the competent Court of jurisdiction at Gurdaspur.

While issuing notice of motion, following order was passed by this Court on 15.12.2021: -

“Learned counsel for the petitioner would contend that the petitioner-wife would have to travel a distance of about 70 kilometres (one way) from her place of residence in District Gurdaspur in order to attend to the proceedings initiated by

the respondent-husband under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights in the Court of Principal Judge, Family Court, Amritsar bearing No.HMA/1072/2020 dated 10.09.2020 and, hence, she would not be able to properly defend her case on each and every date of hearing. The learned counsel would further contend that the petitioner also has a minor child to look after and has no independent source of income. It is further contended that two other cases initiated by the petitioner - one under Sections 12, 19(F), 19(8), 20(D), 20(2), 22, 23 of the Protection of Women from Domestic Violence Act, 2005, and the other under Section 125 CrPC for grant of maintenance – are already pending at Gurdaspur.”

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 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.

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.”

As per office report, the respondent is served through the

counsel before the trial Court, however, there is no representation on his behalf.

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 9 of the Hindu Marriage Act, pending before the Family Court, Amritsar will be transferred to the competent Court of jurisdiction at Gurdaspur.*
- 2. The District Judge, Gurdaspur will assign the said petition to the competent Court of jurisdiction.*
- 3. The Family Court, Amritsar is directed to transfer all the*

*record pertaining to the aforesaid case to District Judge,
Gurdaspur.*

*4. The parties are directed to appear before the Family Court,
Gurdaspur within a period of 01 month from today.*

*5. The Court concerned, where the litigations between the parties
are pending, will accommodate them with one date in one
calender month.*

Present petition is disposed of accordingly.

**[ARVIND SINGH SANGWAN]
JUDGE**

22.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No