

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

Transfer Application No.1346 of 2022

Date of decision :-07.11.2022

Anju

.....Applicant

Versus

Anil Kumar

.....Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- None.

NIDHI GUPTA J. (Oral)

1. The lawyers are abstaining from work today.
2. By way of the present application, the applicant is seeking transfer of case bearing No.HMA/264/2019, filed under Section 12(1-A) of the Hindu Marriage Act, titled as 'Anil Kumar vs. Anju', pending before the Principal Judge, Family Court, Karnal to the competent Court in District Sonipat.
3. The case of the applicant is that the marriage between the parties was solemnized on 28.11.2010 according to Hindu rites and ceremonies. Thereafter, the relationship ruined between the parties and the respondent-husband turned the applicant-wife out of the matrimonial home and as she had no place to go, she started living with her parents at District Sonipat.

4. The respondent-husband has filed the petition under Section 12(1-A) of the Hindu Marriage Act against the applicant-wife, which is pending before the Principal Judge, Family Court, Karnal.

5. It is stated in the present application that the applicant-wife has no source of income and apprehends threat to her life as the respondent-husband is stated to have criminal antecedents and an FIR bearing No.140 dated 27.2.2020, under Section 302 IPC read with Section 34 IPC has also been registered against him at Police Station Asandh, District Karnal. It is also stated in this application that the respondent-husband had never paid anything to her towards maintenance and therefore it is very difficult for her to travel the distance of approximately 80 kilometers one side from District Sonipat to District Karnal. She has submitted in the application that all the expenses have been borne by her parents and she is living on their mercy. The applicant has further relied upon the decisions rendered by Hon'ble Supreme Court in *Anindita Das vs. Srijit Das, (2006)9 SCC 197* and *Gunveen vs. Prabhjot Singh, 2017(1) HLR 894*.

6. It is *inter alia* on these grounds that petitioner prays for transfer of the case, as detailed above, from the Principal Judge, Family Court, Karnal to the competent Court in District Sonipat.

7. 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.”

8. 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.”

9. 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.

10. After going through the entire paper book, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner-wife will have to bear the litigation expenses and transportation expenses and in case, notice of motion is issued, even the respondent-husband has to bear the litigation expenses 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 12(1-A) of the Hindu Marriage Act, pending in the Court of learned Principal Judge, Family Court, Karnal, which is pending for 04.1.2023, is transferred to a Court of competent jurisdiction at Sonipat.
- b) The Id. District Judge, Karnal is directed to transfer complete record pertaining to the aforesaid case to District Judge, Sonipat.
- c) The parties are directed to appear before the District & Sessions Judge, Sonipat on 04.1.2023.
- d) The District Judge, Sonipat, will assign the said petition to the Court of competent jurisdiction.

11. The concerned Court at Sonipat 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.

12. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

13. However, liberty is granted to the respondent to revive this petition, if he intends to contest the same, provided that :-

(a) The respondent will clear all arrears of maintenance amount, if any, in terms of any petition filed by the petitioner either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.

(b) The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at District Courts, Karnal, on each and every date of hearing.

(c) The respondent will bring a demand draft of Rs.25,000/-, drawn in favour of petitioner, towards the litigation expenses to pursue the case at District Karnal in case the respondent opts to contest this petition.

14. I am supported in the above by 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**.

15. As already notice above, today neither the counsel for the petitioner nor the petitioner has come present. Accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Sonipat on 04.1.2023, it is directed that a copy of this order be sent to the parties through registered post, besides sending a copy of this order to the District Judges concerned through e-mail.

Disposed of.

November 07, 2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No