

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

241

TA-1274-2021 (O&M)
Date of decision: 09.08.2022

Meenu**...Petitioner**

Versus

Kapil Kumar**...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Ms. Divya Narula, 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 13(i-a)(iii) of the Hindu Marriage Act, 1955, titled as ***Kapil Kumar vs. Meenu***, pending before the Family Court, Fatehabad to the competent Court of jurisdiction at Sirsa.

While issuing notice of motion on 21.12.2021, the following order was passed:

“Learned counsel for the petitioner would contend that the petitioner-wife would have to travel a distance of about 80 kilometres (up & down) from her place of residence in District Fatehabad in order to attend to the divorce proceedings initiated by the respondent-husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 pending in the Court of Principal Judge, Family Court, Fatehabad bearing case No.HMA/527/2020 and, hence, she would not be able to properly defend her case on each and every date of hearing. It is further contended that a petition under Section 125 CrPC for grant of maintenance initiated by the petitioner as well as a case

registered vide FIR No.180 dated 18.08.2021 under Sections 323, 34, 406, 498-A, 506 IPC at Police Station Sadar Sirsa are already pending at Sirsa. The further contention is that the petitioner has no source of income and she is residing with her parents.

Notice of motion returnable 27.01.2022.

Dasti as well. Liberty to serve through the counsel representing the respondent in the Court below.”

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 for the petitioner has further relied upon ***2022 Live Law (SC) 627 N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha***, wherein 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.”

As per office report, the respondent is served, 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 if the aforesaid petition is not transferred, the petitioner-wife will have to bear the litigation expenses and transportation expenses and also in view of the ratio of law laid down by Hon'ble Supreme Court in ***Sumita Singh's*** case (supra) and ***Rajani Kishor Pardeshi's*** case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

(i) *The petition filed under Section 13(i-a)(iii) of the*

Hindu Marriage Act, pending before the Family Court, Fatehabad will be transferred to the competent Court of jurisdiction at Sirsa.

- (ii) The District Judge, Sirsa will assign the said petition to the competent Court of jurisdiction.*
- (iii) The Family Court at Fatehabad is directed to transfer all the record pertaining to the aforesaid case to District Judge, Sirsa.*
- (iv) The parties are directed to appear before the trial Court at Sirsa within a period of 01 month from today.*

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

- (i) The respondent will clear all the arrears of maintenance amount, if any, in terms of the 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.*
- (ii) The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Fatehabad, on each and every date of hearing.*
- (iii) The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Fatehabad, in case the respondent opts to contest this petition.*

09.08.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*