

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

**TA-1278-2021 (O&M)
Date of decision: 18.07.2022**

Kamaljeet Kaur alias Neena

...Petitioner

Versus

Bhinder Singh Sethi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. J. S. Warring, Advocate
for the petitioner.

Mr. Jagmeet Singh Moudgil, Advocate
for respondent No. 1-husband.

None for respondent No. 2.

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, 1955, titled as ***Bhinder Singh vs. Kamaljeet Kaur alias Neena and another***, pending before the Family Court, Patiala to the competent Court of jurisdiction at Bathinda.

On 22.12.2021, while issuing notice of motion, the following order was passed:

“Learned counsel for the petitioner would contend that the petitioner would have to travel a distance of about 150 kilometres (one way) from her place of residence in Bathinda in order to attend the divorce proceedings initiated by respondent No.1 under Section 13 of the Hindu Marriage Act, 1955 (HM Act) pending in the Court of Principal Judge, (Family Court), Patiala bearing case No.DMC/1503/2019. It is further contended

that the petitioner is taking care of her two minor children and has no independent source of income. The learned counsel has further pointed out that though the case under Section 13 of the HM Act was filed in the year 2019, the same is now fixed for filing written statement on 25.01.2022.

Notice of motion returnable 20.01.2022”

Learned counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner has filed a petition under Section 125 Cr.P.C. as well as a criminal complaint at Bathinda, which are pending. It is further submitted that as a counter-blast to the aforesaid cases filed by the petitioner-wife, the respondent-husband has filed the present petition under Section 13 of the Hindu Marriage Act at Patiala and the petitioner is facing great difficulty in prosecuting the said case, as there is a distance of about 150 kms between Patiala and Bathinda.

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 respondent-husband has opposed the prayer of the petitioner-wife on the ground that the petition filed under Section 13 of the Hindu Marriage Act has already been decreed *ex-parte*.

Be whatsoever, 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 parties, considering the fact that it is the case of the petitioner that she is unable to travel to Patiala to defend the case and she is not in a position to engage a lawyer 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 of the Hindu Marriage Act, filed before the Family Court, Patiala will be transferred to the competent Court of jurisdiction at Bathinda.*
- (ii) *The District Judge, Bathinda will assign the said petition to the competent Court of jurisdiction.*
- (iii) *The Family Court at Patiala is directed to transfer all the record pertaining to the aforesaid case to District Judge, Bathinda.*
- (iv) *The parties are directed to appear before the trial Court at Bathinda within a period of 01 month from today.*

It will be open for the petitioner to move an appropriate

application for setting aside the ex-parte decree passed under Section 13 of the Hindu Marriage Act by the Family Court, Patiala.

18.07.2022

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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No