

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

Transfer Application No. 1282 of 2021 (O & M)

Date of decision: 30.11.2022

Priyanka

.....Petitioner

vs

Mannu Gupta

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ajay, Advocate for
Mr. Jagjeet Beniwal, Advocate
for the petitioner.

Mr. M.K. Garg, Advocate
For the respondent.

NIDHI GUPTA, J.

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955 bearing no. HMA 768 of 2019 titled “Mannu Gupta vs. Priyanka” pending in the Court of Principal Judge, Family Court, Kaithal to a Court of competent jurisdiction at Bhiwani.

2. Learned counsel for the petitioner submits :-

- i) that the parties were married on 21.1.2015 according to Hindu rites and rituals. It is second marriage of the petitioner-wife and third marriage of the respondent-husband.
- ii) that out of this wedlock one male child was born, who is around five years old and living with the petitioner-wife.

- iii) that the petitioner-wife is living separately from the respondent-husband since April 2016 and living with her parents at their mercy at Bhiwani.
 - iv) that the petitioner is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband is not paying anything to her towards maintenance.
 - v) The respondent-husband has filed the petition under Section 13 of the Hindu Marriage Act, which is pending before the Principal Judge, Family Court, Kaithal.
 - v) that the distance between place of residence of the petitioner-wife i.e. Bhiwani and the place of proceedings under Section 13 of the Hindu Marriage Act, 1955 filed by the respondent-husband, pending before the Principal Judge, Family Court, Kaithal, is about 140 kilometers of one side.
 - vi) that there is no proficient male member in the family of petitioner who can accompany her to the Court of proceedings pending at Kaithal.
3. It is *inter alia* on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.
4. Learned counsel for the respondent-husband *inter alia* submits :-

- i) that the respondent-husband is having an eight years old son from his second marriage, who is living with him and for whose care and custody, the respondent-husband is responsible.
- ii) that petition under Section 13 of HMA filed by the respondent-husband, of which transfer is sought, was filed on 20.12.2021 and since then the petitioner-wife has been regularly appearing in the said matter at Kaithal and has even filed her written statement.

- iii) that in fact, the petitioner-wife has filed a petition under Section 24 of the HMA Act before the Court at Kaithal also which is pending adjudication, and in which too, the petitioner is regularly appearing.
- iv) that the respondent-husband is regularly paying Rs.10,000/- per month as maintenance to the petitioner-wife and till date has paid a total sum of Rs.3,80,000/-, which fact has not been disclosed by the petitioner-wife either in the present transfer petition, or during arguments.
- v) that the petition filed under Section 13 of HMA, pending before the Court of competent jurisdiction at Kaithal is at its fag end and the petitioner-wife has to appear before the concerned Court at Kaithal only for one more date.

5. I have heard learned counsel for the parties and gone through the records carefully.

6. On the last date of hearing the parties had been referred to the Mediation and Conciliation Centre of this Court. A perusal of the report of the Mediator dated 29.9.2022 shows that the parties had appeared only for the session dated 12.9.2022; whereafter, the petitioner had sent an application dated 12.9.2022 requesting that due to her personal difficulty she is unable to continue further with the present mediation and as such wanted to get it purged at this stage. Accordingly, the mediation proceedings between the parties remained unsuccessful.

7. This Court is well aware that there is preponderance of case law on this issue which is in favour of the wife. However, in view of the peculiar facts and circumstances of this case, the same being that it has not been disputed that the petitioner-wife has been regularly attending the proceedings u/s 13 HMA at Kaithal which are nearing conclusion,

and that the petitioner herself has filed application u/s 24 HMA at Kaithal which is pending. Moreover, in the present case the respondent too, has a minor child to look after. Even otherwise, the petitioner has not come to this Court with clean hands and has not disclosed that maintenance is being regularly paid to her by the respondent-husband. In this regard, reference is made to the judgments of this Court in *Smt. Akvinder Kaur vs. Sh. Gurpreet Singh* in T.A.No.126 of 2018, decided on 15.11.2018; and *Nisha alias Manisha vs. Amarveer Yadav* in T.A. No.299 of 2019, decided on 15.1.2020, wherein co-ordinate Benches of this Court have dismissed similar petitions/ applications. Therefore, transfer of proceedings do not have to be allowed in favour of the wife in a mechanical manner, but power conferred u/s 24 CPC has to be used judiciously.

8. In view of the above, the present petition stands dismissed.
Pending application(s), if any, stands disposed of.

November 30, 2022

Vijay Asija/Joshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned

YES/NO

Whether Reportable

YES/NO