

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

TA No. 1341 of 2022

Date of decision: 4th November, 2022

Ritu Malhotra

.....Petitioner

v

Gaurav Malhotra

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- None.

Nidhi Gupta, J.(Oral)

The Lawyers are abstaining from work.

Prayer in this petition is for transfer of the petition filed by respondent-husband u/s 13 of the Hindu Marriage Act, 1955 pending before the Id. District Judge Kapurthala to the Court of competent jurisdiction at Fazilka.

It is stated in the petition that the parties were married on 25.2.2006 at Phagwara, District Kapurthala. Out of their wedlock two children- boy and girl- now aged 16 and 14 respectively, were born. It is stated in the petition that on account of matrimonial discord, the petitioner-wife was turned out of the matrimonial home in her three bearing clothes in the year 2017. After this the petitioner took up a private job at Phagwara to maintain her minor children, but due to nationwide lock down during Covid the petitioner has not even been given salary by the school concerned. It is further stated that the petitioner is currently residing at

Jalalabad, District Fazilka at the mercy of her father who is a retired BSF employee and suffering from various medical ailments including paralysis, and the petitioner's mother has already expired on 3.3.2012 due to heart attack. In view of inter-alia, the above facts it is stated in the petition that it is proving difficult for the petitioner to maintain herself and her two minor children who are in her custody and care. In these circumstances, the petitioner was left with no alternative but to file an application dated 11.9.2020 before SSP Fazilka to take legal action. In view of these facts and circumstances she is facing great hardship to travel from Jalalabad in District Fazilka to Kapurthala on each date to defend the petition u/s 13 of HMA, 1955 being HMA/233/2020 that has been filed by the respondent-husband and is currently pending before the Id. District Judge, Kapurthala, as the distance between the two stations is about 200 km. As such, petitioner prays for transfer of the above said case from district Kapurthala, to Court of competent jurisdiction in Fazilka.

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.”

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.”

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.

After going through the entire paperbook, 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:-

1. The petition filed under Section 13 of the Hindu Marriage Act, bearing HMA 233/2020, Gaurav Malhotra vs Ritu Malhotra, pending before the Id. District Judge, Kapurthala will be transferred to the Court of competent jurisdiction at Fazilka.
2. The Id. District Judge, Kapurthala is directed to transfer complete record pertaining to the aforesaid case to District Judge, Fazilka.
3. The parties are directed to appear before the District & Sessions Judge, Fazilka, 25.11.2022.
4. The District Judge, Fazilka, will assign the said petition to the Court of competent jurisdiction.
5. The concerned Court at Fazilka 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.
6. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

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, Kapurthala, 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 Kapurthala in case the respondent opts to contest this petition.

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.**

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, Fazilka on 25.11.2022, 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.

4th November,2022
Joshi

(Nidhi Gupta)
Judge