

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

Transfer Application No. 1337 of 2022

Date of decision: 21.12.2022

Monika Devi

.....Petitioner

VS

Dinesh Kumar

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sunil Agnihotri, Advocate
for the petitioner.

Mr. Naveen Batra, Advocate
for the respondent.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife through her father Narinder Singh, being her Special Power of Attorney holder, is for transfer of the petition filed by respondent-husband for decree of divorce bearing No. HMA/421/2022, titled as “Dinesh Kumar vs. Monika Devi” pending in the Court of Principal Judge, Family Court, Pathankot to a Court of competent jurisdiction at Camp at Mukerian, District Hoshiarpur.

2. Learned counsel for the petitioner has contended :-

- i) That the parties were married on 06.10.2017 according to Hindu rites and rituals.
- ii) That no child was born out of this wedlock.
- iii) That the petitioner-wife is living separately from the respondent-husband since 17.3.2018 and living at the mercy of her parents.

- iv) That the petitioner is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband, who is working as Mechanical Engineer at Jagdambay Engineering and Works Industries at Jalandhar, is not paying anything to her towards maintenance.
- v) The respondent-husband has filed the petition seeking decree of divorce, which is pending before the Principal Judge, Family Court, Pathankot.
The proceedings arising out of petition under Section 125 Cr.P.C.; filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Camp at Mukerian, District Hoshiarpur.
- v) That the distance between place of parental residence of the petitioner-wife i.e. Mukerian, District Hoshiarpur and the place of proceedings of petition seeking decree of divorce filed by the respondent-husband, pending before the Principal Judge, Family Court, Pathankot, is about 55 kilometers of one side.
- vi) That presently petitioner is residing with her parents and is not in a condition to pursue the proceedings of the case at Pathankot.

3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

4. In response to the notice of motion issued, the respondent has put in appearance through his counsel and controverted the contents of the petition and filed the reply. The respondent has taken the following grounds in his reply :-

- a) That the present petition is not maintainable as the same has been filed by petitioner-wife Monika Devi through her father Narinder Singh being Special

Power of Attorney but as per the contents of the Special Power of Attorney, said Narinder Singh is authorized only to contest the suit/case pending at Mukerian and not to contest the matter before this Court.

- b) That the petitioner-wife Monika Devi is presently residing in Canada, where she is pursuing her higher studies and this very fact has been concealed by the petitioner and nowhere mentioned in her petition.
- c) That the present Transfer Petition has been filed by the petitioner-wife Monika Devi through her father Narinder Singh being Special Power of Attorney holder and distance between Pathankot to Mukerian, District Hoshiarpur is only 40 Kilometers and being male person there would not be any problem for her father to travel such a small distance to pursue the Court proceedings pending at Pathankot because in the petition itself no such disability of the father of petitioner is mentioned, which could restrain him from travelling such a small distance.
- d) That moreover, the respondent is a small shopkeeper and earning his livelihood from that shop only and is also looking after his old aged and ailing parents, who are living with him and except the respondent, there is no one to look after them.
- e) That the petitioner-wife Monika Devi is misusing the law because it is well settled that in the matrimonial cases, the proceedings initiated at the instance of husband can be transferred keeping in view the convenience of lady, where it would create great hardship and where she would not be able to travel; but in this very case the petitioner-wife

Monika Devi is presently residing in Canada and pursuing her higher studies and only to mentally and physically harass the respondent and his family members, she has filed the present frivolous applicationn to transfer the petition filed by the husband seeking decree of divorce from the Family Court, Pathankot to the Camp Court at Mukerian, District Hoshiarpur.

5. I have heard learned counsel for the parties.

6. After hearing learned counsel for the parties and perusing the case file, I find that the present petition deserves to be dismissed because first the petitioner has concealed this fact that presently she is residing in Canada and pursuing her higher studies; and secondly, the present petition has been filed by the petitioner-wife Monika Devi through her father Narinder Singh being her Special Power of Attorney and in her petition it is nowhere mentioned that the said Narinder Singh, due to any specific inability, is unable to travel such a small distance of 40 Kilometers and could not pursue the proceedings of the petition filed by the respondent, pending before the Family Court, Pathankot. Moreover, the respondent, who is running a small shop, is also looking after his old aged and ailing parents, who are residing with him.

7. This Court is well aware of the preponderance of law in cases of transfer emanating from matrimonial disputes is in favour of the wife. However, in certain similar cases the Hon'ble Supreme Court, as well as this Court have refused relief to the wife. One such case which may be referred to is: **(2006) 9 SCC 197 'Anindita Das Vs. Srijit Das'** wherein Hon'ble Supreme Court under similar

circumstances dismissed the wife’s application seeking transfer of petition filed by the husband. Reference in this regard may also be made to two cases of this Court where, insimilar circumstances this Court had dismissed transfer applications filed on behalf of the wife. These are: **TA no. 126 of 2018 Smt. Akhwinder Kaur Vs. Sh. Gurpreet Singh;** and **TA No. 299 of 2019 Nisha alias Manisha vs. Amarveer Yadav.**

8. Hence, the present petition stands dismissed.

Pending application(s), if any, stands disposed of.

December 21, 2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	YES/NO
Whether Reportable	YES/NO