

TA-32-2023 (O&M)

- 1 -

212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

TA-32-2023 (O&M)

Decided on: 04.12.2023

Manju Bala

...Applicant/Petitioner

Versus

Vikas Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ravi Chadda, Advocate
for the Applicant/petitioner.

None for the respondent.

SANJAY VASHISTH, J. (Oral)

1. Present transfer application, under Section 24 CPC, has been filed by the petitioner - wife, for seeking transfer of the petition, bearing No.HMA/413/2022, filed by the respondent – husband, under Section 9 of the Hindu Marriage Act, 1955, titled as “Vikas Singh v. Manju Bala”, presently pending in the Court of Principal Judge, Family Court, Pathankot, to any Court of competent jurisdiction at Mukerian, District Hoshiarpur. The distance between the two places is about 50 KMs.

Marriage between the petitioner and respondent was performed on 18.04.2018 and both of them separated from each other in the year 2020.

Notice was issued to the respondent and he was served through his mother. Even at the second address also when notice was issued by this Court, a report has been received that respondent is working somewhere outside and the house was found locked.

This Court is of the view that the prayer made in the application

TA-32-2023 (O&M)

- 2 -

for transfer of petition under Section 9 of the Hindu Marriage Act, 1955, by the respondent-husband is worth considerable, without further wastage of time.

It has been prayed in the transfer application that the petitioner is staying with her parents and she is completely dependent upon them. There is no one to accompany her to the proceedings of the divorce petition in the Courts at Pathankot.

One application bearing No.4711-PD, dated 03.11.2021, has already been addressed to the SSP, Hoshiarpur, in which respondent has effected a compromise on 25.11.2021.

One application under Section 125 Cr.P.C. is pending before the Family Court at Mukerian (Hoshiarpur) and the respondent has already joined proceedings in the aforesaid case. Till today no maintenance has been paid by the respondent to the petitioner.

2. I have heard learned counsel for the petitioner and gone through the material available on record.

3. In the facts and circumstances similar to the present case, in paragraph Nos. 9 & 10 of the judgment rendered in the case of N.C.V. Aishwarya v. A.S. Saravana Karthik Sha, AIR 2022 SC 4318, Hon'ble the Apex 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.”

4. Further, Hon’ble the Apex Court in **Rajani Kishor Pradeshi v. Kishor Babulal Pardeshi**, (2005) 12 SCC 237, 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 ordinary be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships.*”

5. However, to avoid any misuse of the lenient view by the female litigants, Hon’ble the Apex Court in **Anindita Das v. Srijit Das**, (2006) 9 SCC 197, has also cautioned that the Courts should ensure that such leniency given to the female litigants should not be misused. Relevant Paragraph 3 of the aforesaid judgment says as under:

“3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency taken by this Court. On an average at least 10 to 15 transfer petitions are on Board of each Court on each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.”

6. Thus, this Court is of the view that while adjudicating a transfer petition initiated by the wife in the context of a matrimonial dispute, the

TA-32-2023 (O&M)

- 4 -

Court must take into account a comprehensive array of the following factors:-

- (a) Economic condition and earning capacity of the parties, i.e. husband and wife;
- (b) Social standing of the wife and her dependency on her parents;
- (c) Custody of any minor children involved;
- (d) Education of the children, if any;
- (e) Physical well-being of both, i.e. wife and husband;
- (f) Pending litigation(s) between the parties including criminal cases, if any;
- (g) Accessibility of the location from where the wife resides to the court where the case is pending;
- (h) Availability of convenient commuting options

Undoubtedly, only a harmonious consideration of all these vital aspects would ensure a just and equitable decision in such cases.

7. Thus, applying the principles of law, laid down by Hon'ble the Apex Court in N.C.V Aishwarya's case (supra), Rajani Kishor's case (supra) and Anindita Das's case (supra), this Court deems it appropriate to allow the present petition, by issuing following directions:

- (i) Petition filed by respondent - husband under Section of the 9Hindu Marriage Act, 1955, bearing No. , titled as "Vikas Singh v. Manju Bala", pending in the Court of Principal Judge, Family Court, Pathankot, is transferred to a Court of competent jurisdiction within Sessions Division Hoshiarpur.
- (ii) Learned District Judge, Pathankot, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Hoshiarpur, by directing both the sides to appear before the Court of learned District Judge, Hoshiarpur, on a particular date to be fixed by him, for further proceedings.

TA-32-2023 (O&M)

- 5 -

- (iii) On receipt of record of the case, learned District Judge, Hoshiarpur, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Hoshiarpur, to try the same.
- (iv) The concerned Court at Hoshiarpur, shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.
- (v) After transfer at Hoshiarpur, the concerned Court will accommodate the parties to the *lis* with at least one date in a calendar month.

8. In order to ensure appearance of the parties before learned District Judge, Hoshiarpur, as per the direction of learned District Judge, Pathankot, it is also directed that a copy of this order be sent to the respondent through registered post, besides sending copies of this order to learned District Judges concerned, through email as well.

Petitioner through her counsel, is also directed to ensure her appearance accordingly.

Petition stands **disposed of** in above terms.

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

(SANJAY VASHISTH)
JUDGE

04.12.2023
dharamvir

Whether speaking/reasoned: Yes
Whether Reportable: Yes