

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

Transfer Application No. 132 of 2022

Date of decision :-24.04.2023

Pooja @ Shivangi Goyal (Shivangi Garg)

.....Petitioner

vs

Raman Garg @ Ramandeep Garg

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Jasdev Singh Thind, Advocate
for the petitioner.

None for the respondent despite service.

NIDHI GUPTA, J.(Oral)

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 (for short 'the Act') titled 'Raman Garg @ Ramandeep Garg vs. Pooja @ Shivangi Goyal (Shivangi Garg)' pending in the Court of Additional District & Sessions Court-cum-Family Court, Sirsa to a Court of competent jurisdiction at Hisar.

Order sheets shows that vide order dated 05.09.2022 the respondent had been served but there was no representation on his behalf. After that case has been taken up several times but the respondent has not put in appearance. Today also, nobody is present to represent him. Accordingly, this petition is being decided in his absence.

2. Learned counsel for the petitioner has contended :-

- i) That the parties were married on 08.12.2019 according to Hindu rites and rituals.
 - ii) That a female child was born out of this wedlock, who is around 1-½ years of age and is in the care and custody of the petitioner.
 - iii) That the petitioner-wife is living separately from the respondent-husband and living with her parents at their mercy at Hisar.
 - 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) That the proceedings arising out of petitions :-
 - (a) under the Protection of Women from Domestic Violence Act, 2005;
 - (b) under Section 125 Cr.P.C.; and
 - (c) FIR No.557 dated 17.08.2021, under Sections 498-A etc., Police Station HTM, Hisar; and
 - (d) Petition under Section 9 of HMA;filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Hisar.
 - vi) That the distance between place of residence of the petitioner-wife i.e. Hisar and the place of proceedings under Section 13 of the Act, filed by the respondent-husband, pending before the Principal Judge, Family Court, Sirsa, is about 120 kilometers of one side.
 - vii) That being old aged, the parents of the petitioner are not in a position to accompany her to the Court of proceedings at Sirsa and it is also difficult for the petitioner to travel alone alongwith minor daughter.
3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

4. I have heard learned counsel for the petitioner.

5. Besides the facts as noticed hereinabove, 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**, 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.”

6. Further reliance can be placed upon the judgments in **“Sumita Singh vs Kumar Sanjay”, 2002 SC 396** and **“Rajani Kishor Pardeshivs 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.”

7. 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.

8. In view of the facts mentioned above and 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:-

- a) The petition filed by respondent husband under Section 13 of Act, bearing No. HMA/439/2021 titled as 'Raman Garg @ Ramandeep Garg vs. Pooja @ Shivangi Goyal (Shivangi Garg)', pending in the Court of Principal Judge, Family Court, Sirsa is transferred to a Court of competent jurisdiction at Hisar.
- b) The Id. District Judge, Sirsa is directed to transfer complete record pertaining to the aforesaid case to District Judge, Hisar.
- c) The parties are directed to appear before the District & Sessions Judge, Hisar on 25.5.2023.
- d) The District Judge, Hisar will assign the said petition to the Court of competent jurisdiction.

9. The concerned Court at Hisar 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.

10. The Court concerned, where the litigation is pending between the parties, will accommodate them with one date in one calendar month.

11. I am supported by the 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.**

Disposed of.

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

April 24, 2023
Vijay Asija

(NIDHI GUPTA)
JUDGE

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