IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

114 **TA No.157 of 2023 (O&M)**
Date of decision: 06.02.2023

Krishna **...Petitioner(s)**

vs

Jitender Malik **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Himanshu Malik, Advocate for the petitioner.

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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, titled "Jitender Malik vs. Krishna" pending in the Court of Principal Judge, Family Court, Camp at Gohana, District Sonepat to a court of competent jurisdiction at Rohtak.

2. Learned counsel for the petitioner, inter alia, submits that:

i) that the parties were married on 26.11.2016.
ii) that one daughter was born out of the wedlock on 28.06.2018.
iii) that the petitioner along with her minor daughter is living with her brother in a rented accommodation at Rohtak.
iv) that the petitioner has also filed petition under Section 125 Cr.P.C. at Rohtak.
v) that the petitioner has no source of income.
vi) that the respondent is working in Indian Airforce.
vii) that distance between place of residence and place of proceedings is 50 kms. (one side).

3. I have heard learned counsel for the petitioner.

4. The legal position in such like cases as the present one, is well established. In this regard, judgment of the Hon'ble Supreme Court

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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.
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> 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."

5. 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."

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6. 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.

7. 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:-

a) The petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled "Jitender Malik vs. Krishna" pending in the Court of Principal Judge, Family Court, Camp at Gohana, District Sonepat is transferred to a court of competent jurisdiction at Rohtak.

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b) The ld. District Judge, Sonepat is directed to transfer complete record pertaining to the aforesaid case to District Judge, Rohtak.

c) The parties are directed to appear before the District & Sessions Judge, Rohtak on 21.02.2023.

d) The District Judge, Rohtak will assign the said petition to the Court of competent jurisdiction.

8. The concerned Court at Rohtak 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.

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

10. 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 Family Court, Gohana on each and every date of hearing.

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(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 Courts, Sonepat in case the respondent opts to contest this petition.

11. 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.**

12. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Rohtak on 21.02.2023, it is directed that a copy of this order be sent to the respondent(s) through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioner through her counsel, present in the Court, is directed to ensure her appearance accordingly.

Disposed of.

06.02.2023 **(Nidhi Gupta)**
ashok **Judge**
Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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