

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA 313/2022

Date of decision: 23.03.2023

Anuti

.....Petitioner

Vs.

Shankar Gupta

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. V.K. Gupta, Advocate for the petitioner.

 Mr. Jai Vir Yadav, Senior Advocate assisted by
 Mr. Tarun Yadav, Advocate for the respondent.

Nidhi Gupta, J.

1. Petitioner wife-Anuti has filed the present petition u/s 24 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) seeking transfer of divorce petition bearing HMA 65/2022 (Annexure P-3) filed by respondent husband-Shankar Gupta from the Court of Ms. Manisha Jain, ADJ, Chandigarh to a Court of competent jurisdiction at Jagadhari.

2. It is averred in the petition that marriage between the petitioner and respondent was solemnized on 21.2.2007 at Zirakpur according to Hindu rites and rituals. Out of this wedlock two female children were born namely Aastha Gupta and Aanchal Gupta. It is alleged by the petitioner that the respondent used to come home late in inebriated condition and used to treat her brutally as she resisted his attempt to make unnatural relation. Even his family members did not pay any heed to the complaints made by the petitioner regarding conduct of the respondent and instead teased and insulted her. Petitioner filed a petition u/s 12 of the Domestic Violence

Act, 2005 (Annexure P-1) in the court at Yamuna Nagar at Jagadhari and also lodged FIR No. 626 dated 16.5.2018 u/s 498-A/323/506 IPC at PS Jagadhari City. It is further alleged that as a counterblast to the legal recourse taken by the petitioner, respondent has now filed the Divorce Petition at Chandigarh. It is averred that the petitioner is a poor lady with no source of income and that respondent has illegally deserted her for the last many years. In these conditions, it is averred that the petitioner is residing with her parents with no source of income, whereas respondent who is a practicing Advocate and earning handsome amount has not paid her even a single penny. It is then alleged that petitioner is active in Bar politics of District Bar Association, Chandigarh as he held various posts including President, Vice President etc., of District Bar Association, Chandigarh due to which petitioner has every apprehension that respondent will use his influence in the proceedings of the case at Chandigarh. It is alleged that petitioner has not even been allowed to meet her children despite the Court order (Annexure P-4) and that it would be difficult for the petitioner to attend the divorce proceedings at Chandigarh, which is 100 kms. away from her parental home, where she is staying. In these circumstances, prayer, as noticed in para 1 above has been made.

3. Upon notice, reply has been filed. The factum of marriage and birth of two female children is admitted. It is averred that two minor daughters namely Ms. Aastha Gupta, aged 13 years and Ms. Aanchal Gupta, aged 10 years are residing with the respondent and studying in 8th and 5th standard respectively at DPS School, Sector 40, Chandigarh. It is averred that respondent is a busy lawyer looking after the minor daughter and aged mother and as such it would be difficult for him to attend cases at Yamuna Nagar and the request for transfer of divorce petition from Chandigarh to Jagadhari is not

in the interest of studies of children besides being inconvenient to the respondent. It is alleged that petitioner wife is running a school and thus having substantial income to maintain herself. As regards the allegation of the petitioner wife that respondent wields a clout in the District Bar Association, respondent in para 10 of his reply has stated that “.....*The respondent is a humble lawyer and however, by virtue of his being a man of good nature and very accommodating, he held various posts in District Bar Association, Chandigarh*”.

4. Learned counsel for the petitioner states that the respondent being President of the District Bar Association, Chandigarh, no Advocate is ready to represent the petitioner in the said divorce petition and in view of the financial condition of the petitioner, it would not be feasible for her to engage an outside lawyer. It is further stated that the transfer of present divorce proceedings would make no difference to the respondent who is already appearing in the proceedings initiated by petitioner under the D.V.Act and criminal proceedings at Jagadhari, whereas it would be very difficult for the petitioner to represent her case at Chandigarh due to (i) her financial condition; (ii) travelling distance of 100 kilometers between Chandigarh and Jagadhari; and (iii) position of the respondent, who is a practicing Advocate and President of the District Bar Association, Chandigarh.

5. In reply, Id. Counsel for the respondent states that the respondent has a hectic schedule as an Advocate and has also to shoulder the responsibility of two school going daughters. It is stated that this Court in **T.A.145/2022 titled Madhu Garg v Sushil Garg**, decided on 5.12.2022 has declined the request of the petitioner wife to transfer petition u/s 13 of the

Act from Yamuna Nagar to Mohali, wherein respondent husband was looking after three children.

6. No other argument has been raised on behalf of the parties.

7. Heard Id. Counsel for the parties.

8. The petitioner wife is seeking transfer of the divorce petition on the ground that she is financially strained with no source of income. Another ground on which she is seeking transfer is the position of the respondent in the District Bar Association, who is admittedly President of the District Bar Association, Chandigarh and due to which no local lawyer at Chandigarh is ready to represent her. It is also her case that respondent is already appearing in the proceedings initiated by her at Jagadhari. In my opinion, the hardship that the petitioner may face in attending divorce proceedings at Chandigarh appears to be genuine and cannot be ignored by this Court. As regards, the order dated 5.12.2022 passed by this Court in TA 145/2022, relied upon by the Id. Counsel for the respondent is concerned, respondent can derive no benefit from the same, as in the said case the respondent husband was in shuttering business which is not so in the present case.

9. No doubt in certain similar cases the Hon'ble Supreme Court as well as this Court has refused relief to the wife. However, while doing so various aspects of the matter weigh with the Court. In my considered opinion, refusing the relief of transfer sought by the petitioner would only create hindrance in her pursuit to get justice and putting her in a disadvantageous position by giving a go-by to judicial conscience in view of the fact that in the unfortunate legal battle she is pitted against respondent who is a practicing

Advocate and President of the District Bar Association, Chandigarh, due to which no counsel at Chandigarh is ready to represent her. Further the respondent is already attending to the proceedings initiated by the petitioner wife under the D.V. Act at Jagadhari and being a man of means he can bear the expenses of attending proceedings at Jagadhari.

10. For the reasons stated above, the present Transfer Application is allowed with the following conditions: -

a) The divorce petition filed by respondent husband as detailed in para 1 above pending in the Court of Additional District Judge, Chandigarh is transferred to a Court of competent jurisdiction at Yamuna Nagar at Jagadhari.

b) The Id. District Judge, Chandigarh is directed to transfer complete record pertaining to the aforesaid case to District Judge, Yamuna Nagar.

c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Yamuna Nagar on 20.4.2023.

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

11. The concerned Court at Yamuna Nagar 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.

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

Disposed of.

23.03.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No