

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

TA No.581 of 2021 (O&M)
Date of decision: 04.01.2023

Ritu Sharma

...Petitioner

v

Pankaj Sharma

...Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Deipa Asdhir Dubey, Advocate for the petitioner.

Mr. Vipin Kumar, Advocate for the respondent.

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 9 of the Hindu Marriage Act, 1955, bearing No.HMA/161/2021 titled "Pankaj Sharma vs. Ritu Sharma" pending in the Court of Addl. Principal Judge, Family Court-I, Jalandhar to a court of competent jurisdiction at Chandigarh.

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

i) that the marriage between the parties was solemnised on 10.12.2006 according to Hindu rites and rituals.

ii) that two boys were born out of the wedlock.

iii) that the petitioner along with the minor children is residing with her parents at Chandigarh.

iv) that both the children are studying in Chandigarh.

v) that the petitioner has no source of income.

vi) that as per medical reports of the petitioner (Annexure P1) she is unable to travel at a long distance due to her spinal TB problem.

vii) that the petitioner has also filed complaint under the Protection of Women from Domestic Violence Act, 2005, at Chandigarh; and a complaint to the SSP Chandigarh.

viii) that the parties are living separately since 13.03.2021.

ix) that the distance between her place of residence and Court at Jalandhar is 165 kms. (one side).

3. Learned counsel for the respondent is unable to dispute the aforesaid facts.

4. I have heard learned counsel for the parties.

5. 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**, 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.

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 Pardeshi vs 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. After hearing the learned counsel for the parties 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 9 of the Hindu Marriage Act, 1955, bearing No.HMA/161/2021 titled “Pankaj Sharma vs. Ritu Sharma” pending in the Court of Addl. Principal Judge, Family Court-I, Jalandhar is transferred to a court of competent jurisdiction at Chandigarh.

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

c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Chandigarh on 02.02.2023.

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

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

Disposed of.

04.01.2023

ashok

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No