

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

2023:PHHC:065144

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TA No.573 of 2023 (O&M)

Date of decision: 05.05.2023

Sunil Garg

...Petitioner

Vs

Seema

...Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Tanvir Singh Attariwala, Advocate for the petitioner.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-husband is for transfer of petition bearing No.DMC-1014/2020 filed by respondent-wife under Section 13 of the Hindu Marriage Act, 1955, titled 'Seema vs. Sunil Garg' pending in the Court of Principal Judge, Family Court, Hisar, to a court of competent jurisdiction at Kaithal.

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

- i) that the parties solemnized marriage on 27.06.2019.
- ii) that a child was born out of the wedlock on 23.07.2020, who is admittedly residing with the respondent.
- iii) that the petitioner is residing in Kaithal and working on contract basis at Karnal.
- iv) that the distance between the place of residence and place of proceedings is 124 kms (one side).
- v) that the following cases are also pending between the parties at Hisar:-
 - a. Petition under Section 125 Cr.P.C.
 - b. Petition under the Protection of Women from Domestic Violence Act, 2005.

vi) that it is fairly submitted that the respondent is also working.

3. I have heard learned counsel for the petitioner.

4. In view of the above noted facts and circumstances of the present case, wherefrom it is clear that it is the respondent who is solely responsible for the complete welfare of the child who is admittedly in her care and custody, I do not find merit in the present transfer petition. The petitioner has been unable to show as to why he is unable to travel. Whereas, it is not in dispute that respondent is working and she has the added responsibility of looking after the daily needs as well as provide all emotional and mental support to the child who is in her care and custody. Moreover, two cases are also pending between the parties at Hisar, and no cogent or convincing reason has been advanced by the petitioner for transferring the Section 13 HMA petition.

5. Even otherwise, legal position in such cases as the present one is also very clear. Reference in this regard may be made in particular, to judgment rendered by the Hon'ble Supreme Court, in case of **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. Accordingly, in view of the facts as noted above, this petition stands dismissed. Pending applications, if any, stand disposed of.

05.05.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)

Judge