

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

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**TA-795-2023
Decided on : 07.11.2023**

Malti Khurana

. . . Applicant/Petitioner

Versus

Vivek Khurana

. . . Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. B.S. Mittal, Advocate for the petitioner.

SANJAY VASHISTH, J. (Oral)

1. As per office report, notice sent to the respondent has been received back unserved with the report that he is not residing at the given address.

Upon this, learned counsel for the petitioner points out that in the divorce petition, petitioner has himself mentioned the same address and the address has been taken out from the divorce petition itself.

In view of the above, this Court does not feel appropriate to call other side at this stage.

2. Present transfer application has been filed by the petitioner—wife, under Section 24 of CPC, for seeking transfer of the petition bearing No.HMA/297/2023 filed by the respondent-husband under Section 13 of Hindu Marriage Act, 1955 titled as “Vivek Khurana Vs. Malti Khurana” pending in the Court of learned Additional Principal Judge (Additional Family Court), Gurugram to any Court of competent jurisdiction at Mohali.

3. The present transfer petition has been filed, *inter alia*, on the

following grounds:-

- i) That the petitioner-wife and respondent-husband got married on 08.11.2008 according to the Hindu rites and ceremonies;
- ii) That out of the said wedlock, one male child, namely Adhyayan, was born, who is a minor, now aged 12 years and is staying with the petitioner
- iii) The son of the petitioner and respondent is studying in Amity International School, Mohali.
- iv) That the petitioner-wife is a software engineer and is working with Intersoft Company by doing work from home , while the respondent-husband is doing job at Mumbai.
- v) That traveling from Mohali to Gurugram to and fro is a distance of around 700 kms, thus, causing extreme hardships to the petitioner-wife.

4. I have heard learned Counsel for the petitioner, and gone through the material available on record.

In the facts and circumstances similar to the present case, in paragraph Nos.9 and 10 of the judgment rendered in the case of N.C.V. Aishwarya v. A.S. Saravana Karthik Sha, AIR 2022 SC 4318, Hon'ble the Apex 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.”*

5. Further, Hon’ble the Apex Court in **Rajani Kishor Pradeshi v. Kishor Babulal Pardeshi, (2005) 12 SCC 237**, 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.*”

6. However, to avoid any misuse of the lenient view by the female litigants, Hon’ble the Apex Court in **Anindita Das v. Srijit Das, (2006) 9 SCC 197**, has also cautioned that the Courts should ensure that such leniency given to the female litigants should not be misused. Relevant Paragraph 3 of the aforesaid judgment says as under:

“3. *Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency taken by this Court. On an average at least 10 to 15 transfer petitions are on Board of each Court on each admission day. It is,*

therefore, clear that leniency of this Court is being misused by the women.”

7. Thus, this Court is of the view that while adjudicating a transfer petition, in the context of a matrimonial dispute, the Court must take into account a comprehensive array of the following factors:-

- (a) Economic condition and earning capacity of the parties i.e. husband and wife;
- (b) Social standing of the wife and her dependency on her brother;
- (c) Custody of any minor children involved;
- (d) Education of the children, if any;
- (e) Physical well-being of both, i.e. wife and husband;
- (f) Pending litigation between the parties including criminal cases, if any;
- (g) Accessibility of the location i.e. from where the wife resides to the court where the case is pending; and
- (h) Availability of convenient commuting options

Undoubtedly, only a harmonious consideration of all these vital aspects would ensure a just and equitable decision in such cases.

8. This Court is of the opinion that, for the purpose of deciding the present transfer petition, it is not necessary to issue notice to the respondent-husband. Otherwise, both the parties would be burdened with litigation costs and transportation expenses, which shall be taxing for both the sides.

9. Thus, applying the principles of law, laid down by Hon'ble the Apex Court in N.C.V Aishwarya's case (supra), Rajani Kishor's case (supra) and Anindita Das's case (supra), this Court deems it appropriate to allow the present petition with the following directions:

- (i) The petition bearing No.HMA 297 of 2023 filed by

respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled as "Vivek Khurana Vs. Malti Khurana" pending in the Court of learned Additional Principal Judge (Additional Family Court) Gurugram, is transferred to a Court of competent jurisdiction at Mohali.

- (ii) The learned Additional Principal Judge (Additional Family Court) Gurugram is directed to transfer complete record pertaining to the aforesaid case to District Judge, Mohali, by directing both the sides to appear before the Court of Ld. District Judge, Mohali, on a particular date for further proceedings.
- (iii) The District Judge, Mohali will assign the said petition to the Court of competent jurisdiction.

10. The concerned Court at Mohali shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.

11. The Court, where the matter is to be assigned after transfer, will accommodate the parties to the *lis* with at least, one date in a calendar month.

12. However, liberty is granted to the respondent-husband to revive the present petition, if so advised, to contest the same, provided that:

- (i) If the petitioner-wife has concealed any material fact or aspect while filing the current transfer application, with a purpose to mislead the Court for seeking transfer of the case.

OR

- (ii) If the respondent-husband is suffering from any substantial physical or mental disability or ailment.

OR

- (iii) The respondent-husband will clear all arrears of

maintenance amount, if any, in terms of a 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, or under any other law.

AND

- (iv) The respondent-husband will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Gurugram, on each and every date of hearing.

AND

- (v) The respondent-husband will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Gurugram in case the respondent opts to contest this petition.

13. 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, Mohali, as per the direction of District Judge, Gurugram; it is also directed that a copy of this order be sent to the respondent through registered post, besides sending a copy of this order to the District Judges concerned through email. Petitioner through her counsel, present in the Court, is also directed to ensure her appearance accordingly.

Disposed of.

**(SANJAY VASHISTH)
JUDGE**

November 07, 2023

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No