

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

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TA No.877 of 2022 (O&M)
Date of decision: 24.01.2023

Priyanka Jain**...Petitioner(s)****v****Ajay Jain****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. TPS Makkar, Advocate
for the petitioner.

Mr. Shubham Chandel, Advocate for
Mr. Sunny K. Singla, Advocate for the respondent.

NIDHI GUPTA, J.(ORAL)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition bearing No.HMA-4-2022 filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled "Ajay Jain vs. Priyanka Jain" pending in the Court of Principal Judge, Family Court, Malerkotla, to a court of competent jurisdiction at Family Court, Malout, District Sri Muktsar Sahib.

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

i) that the marriage between the parties was solemnized on 26.01.2004 according to Hindu rites and rituals.

ii) that two children were born out of this wedlock on 13.12.2004 and 10.05.2008.

iii) that the petitioner is residing with her aged parents at Malout since 04.01.2022.

iv) that the distance between her place of residence and place of proceedings is 150 kms. (one side).

v) that the following cases are also pending between the parties at Sri Muktsar Sahib:-

a. Complaint at Women Cell, Sri Muktsar Sahib

b. Petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

vi) that the petitioner has no source of income.

3. Learned counsel for the respondent opposed the present petition and states that unlike the petitioner, the respondent is working hard as he has to support both the children who are residing with him and studying at Ludhiana and Ahmedgarh, District Malerkotla. It is submitted that the respondent has to provide the children all the amenities required for their physical welfare, as also all love and emotional support is also provided only by him as their mother has deserted the matrimonial home. It is further submitted that in this situation it will be more inconvenient and problematic for him to travel to Malout, District Sri Muktsar Sahib, whereas, as the petitioner is not working and has no responsibility of the children either, therefore no inconvenience will be caused to her. Moreover, the respondent was diagnosed with blood cancer and at the relevant time, the petitioner never cared about him. Learned counsel, on instructions, informs that complaint at Women Cell, Sri Muktsar Sahib has been decided in favour of the respondent.

4. I have heard learned counsel for the parties.

5. I find merit in the submissions advanced on behalf of the respondent. This Court is well aware of the fact that preponderance of law in such-like cases of transfer emanating from matrimonial disputes is in favour of the wife. However, 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 children who are in his care and custody. On the other hand, the petitioner has been unable to show as to why she is unable to travel. Whereas, it is

not in dispute that the respondent is working and he has the added responsibility of looking after the daily needs as well as provide all emotional and mental support to the children who are in his care and custody.

6. Moreover, in other similar cases like this present one, the Hon'ble Supreme Court, as well as this Court have refused relief to the wife. One such case which may be referred to is: **(2006) 9 SCC 197 'Anindita Das Vs. Srijit Das'** wherein Hon'ble Supreme Court under similar circumstances dismissed the wife's application seeking transfer of petition filed by the husband. Reference in this regard may also be made to two cases of this Court where, in similar circumstances this Court had dismissed transfer applications filed on behalf of the wife. These are: **TA no. 126 of 2018 Smt. Akhwinder Kaur Vs. Sh. Gurpreet Singh;** and **TA No. 299 of 2019 Nisha alias Manisha vs. Amarveer Yadav.**

7. Accordingly, in view of the facts as noted above, this petition stands dismissed. Pending applications, if any, stand disposed of.

24.01.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge