

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

**TA No.897-2021
Date of decision: 11.01.2023**

PARUL SHARMA

...Petitioner(s)

Vs

SUSHIL KUMAR SHARMA

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Ishita Jain, Advocate for
Mr. Namit Khurana, Advocate
for the petitioner.

None for the respondent, despite service.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner wife is for transfer of petition bearing No.GW/68/2019 filed by respondent-husband under Section 25 of the Guardian and Wards Act (hereinafter referred to as “the Act”) read with Section 6 of Hindu Minority and Guardianship Act, titled “Sushil Kumar Sharma vs. Parul Sharma” pending in the Court of Principal Judge, Family Court, Gurugram, to a court of competent jurisdiction at Yamuna Nagar.

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

- i) that the parties were married on 26.04.2002 according to Hindu rites and rituals.
- ii) that two children were born out of the wedlock.
- iii) that the petitioner along with minor children is living at Yamuna Nagar.

iv) that distance between place of residence and place of proceedings is about 220 kms. (one side)

v) that following cases are stated to be pending at Yamuna Nagar:-

- a) petition under Section 125 Cr.P.C.;
- b) complaint at Police Station Women Yamuna Nagar, under Sections 323, 406, 498-A and 506 IPC.

3. Office report dated 20.01.2022 shows that respondent has been served, however, there is no representation on his behalf. Accordingly, this case is being decided in absence of the respondent.

4. I have heard learned counsel for the petitioner.

5. Transfer in the present petition is being sought of petition filed by the respondent/husband under Section 25 of the Act read with Section 6 of the Hindu Minority and Guardianship Act. Under Section 9 of the Act, jurisdiction of the petition filed under Section 25 of the Act lies where the minor children are residing. Undisputedly, minor children are presently residing with the petitioner at Yamuna Nagar.

6. The legal position in such like cases as the present one, emanating out of matrimonial disputes/discord, 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.”

7. Further reliance can be placed upon the judgments in “**Sumita Singh vs Kumar Sanjay**”, 2002 SC 396 and “**Rajani Kishor Pardeshivs 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.”

8. 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.

9. After hearing learned counsel for the petitioner 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 bearing No.GW/68/2019 filed by respondent-husband under Section 25 of the Guardian and Wards Act read with Section 6 of Hindu Minority and Guardianship Act, titled "Sushil Kumar Sharma vs. Parul Sharma" pending in the Court of Principal Judge, Family Court, Gurugram, is transferred to a court of competent jurisdiction at Yamuna Nagar.

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

c) The parties are directed to appear before the District & Sessions Judge, Yamuna Nagar on 15.02.2023.

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

10. 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.

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

Disposed of.

11.01.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No