

TA-947-2022 (O&M)
TA-1081-2022 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on: December 11, 2023

1. TA-947-2022 (O&M)

Harjeet Kaur

...Applicant/Petitioner

Versus

Jatinder Singh

...Respondent

2. TA-1081-2022 (O&M)

Harjeet Kaur

...Applicant/Petitioner

Versus

Jatinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Piyush Sharma, Advocate, for the Applicant/petitioner.

Mr. Umesh Aggarwal, Advocate, for the respondent.

SANJAY VASHISTH, J. (Oral)

1. This judgment shall dispose of two transfer applications, filed under Section 24 CPC, bearing TA-947-2022 and TA-1081-2022, by the applicant/petitioner.

In TA-947-2022, the petitioner - wife, has sought transfer of the petition, bearing No. HMA/139/2022, filed by the respondent – husband, under Section 13 of the Hindu Marriage Act, 1955, titled as “Jatinder Singh v. Harjeet Kaur”, pending in the Court of Principal Judge, Family Court, Amritsar, to any Court of competent jurisdiction at Ferozepur.

In TA-1081-2022, the petitioner - wife, has sought transfer of the petition, bearing No. GW/26/2022, under Sections 8 and 25 of the Guardians and Wards Act, 1890, titled as “Harjeet Kaur v. Jatinder Singh”, filed by the applicant/petitioner herself, pending in the Court of Additional

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Principal Judge, Family Court, Amritsar, to any Court of competent jurisdiction at Ferozepur.

2. The aforementioned transfer petitions have been filed, *inter alia*, on the following grounds:-

- i) Petitioner-wife and respondent-husband got married on 30.01.2015, at Royal Palace, Ferozepur City, according to the Sikh rites and ceremonies, and they separated from each other on 22.03.2021.
- ii) Out of the said wedlock, one male child, namely, Arman Singh, was born on 29.10.2016, now aged more than 7 years.
- iii) Initially applicant/petitioner alongwith minor son was turned out of the matrimonial home on 22.03.2021. Lateron, due to intervention of Iqbal Singh Sehdev, who is maternal uncle of respondent-husband, custody of minor son was taken over by the respondent-husband on the pretext that after 3-4 days custody of minor son would again be handed over to the applicant/petitioner. However, they resiled from their promise. Thus, the applicant/petitioner was constrained to file petition bearing No. GW/26/2022, under Sections 8 and 25 of the Guardians and Wards Act, 1890, titled as “Harjeet Kaur v. Jatinder Singh”, in the Court of Principal Judge, Family Court, Amritsar.
- iv) Due to matrimonial discord, applicant/petitioner has also filed a petition under Section 125 Cr.P.C.; petition under Section 9 of the Hindu Marriage Act, 1955; and complaint under the Domestic Violence Act, which are pending adjudication in the Courts at Ferozepur, and respondent-husband is also appearing in those proceedings. However, just to harass the applicant/petitioner, respondent-husband has instituted the petition under Section 13 of the Hindu Marriage Act, 1955, at Amritsar, on false and baseless grounds.
- v) To attend proceedings in the Court of Principal Judge, Family

Court, Amritsar, applicant/petitioner has to cover a distance of about 120 Kms. (one side).

- vi) Petitioner-wife is financially dependent on her parents, and lacks convenient transportation options, thus, is compelled to rely on public transit, resulting in significant hardships.
- vii) Financial condition of the parental home of the petitioner-wife is also not sound, and her parental family lives in a hand to mouth condition.
- viii) Due to extreme hardships, the applicant/petitioner is left with no option but to seek transfer of petition under Sections 8 and 25 of the Guardians and Wards Act, 1890, filed by herself, as well, besides transfer of petition filed by respondent-husband, under Section 13 of the Hindu Marriage Act, 1955, from Amritsar to Ferozepur.

3. Learned counsel for the respondent-husband vehemently opposed the prayer made in the present transfer applications and argued that as per Section 9 of the Guardians and Wards Act, 1890, petition could be instituted only at the place where the child resides, and in the present case, admittedly the custody of the minor child is with the respondent-husband, who is a resident of Amritsar.

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

5. I do not find any force in the argument advanced by learned counsel for the respondent-husband. Probably, provision of Section 9 of the Guardians and Wards Act, 1890, has been enacted keeping in view convenience of the child. Moreover, proceedings of the petition under said Act, until the Court directs in specific, is to be attended by the applicant and respondent.

6. Moreover, Section 24 CPC also strengthen the hands of the Court that even if the petition is filed beyond the area of jurisdiction, the same can be transferred by the superior Court. Section 24 of the Code of

Civil Procedure, reads as under:-

“24. General power of transfer and withdrawal. -

(1) *On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may at any stage -*

- (a) *transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or*
- (b) *withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and -*
 - (i) *try to dispose of the same; or*
 - (ii) *transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or*
 - (iii) *retransfer the same for trial or disposal to the Court from which it was withdrawn.*

(2) *Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.*

(3) *For the purposes of this section,-*

- (a) *Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;*
- (b) *"proceeding" includes a proceeding for the execution of a decree or order.*

(4) *The Court trying any suit transferred or withdrawn under this section from a Court of small causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.*

(5) *A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”*

From a bare reading of Section 24 CPC, it is crystal clear that on the application of any of the parties and after hearing them, the High Court or the District Court may at any stage ***withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and transfer the same for trial or disposal to any Court subordinate to it and competent to try***

or dispose of the same.

Thus, in the present case there is no impediment in transferring of the petition under Sections 8 and 25 of the Guardians and Wards Act, 1890, filed by the applicant/petitioner herself, from Amritsar to Ferozepur.

7. In paragraph Nos. 9 & 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.”

8. 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 ordinary be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships.”

9. 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.”

10. Thus, this Court is of the view that while adjudicating a transfer petition initiated by the wife 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 parents;
- (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(s) between the parties including criminal cases, if any;
- (g) Accessibility of the location from where the wife resides to the court where the case is pending;
- (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.

11. Thus, after analyzing the provisions of Section 9 of the Guardians and Wards Act, 1890; Section 24 of the CPC, and 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 both the transfer

applications filed by the applicant/petitioner, by issuing following directions:

- (i) Petition filed by the respondent - husband under Section 13 of the Hindu Marriage Act, 1955, bearing No. HMA/139/2022, titled as “Jatinder Singh v. Harjeet Kaur”, pending in the Court of Principal Judge, Family Court, Amritsar, is transferred to a Court of competent jurisdiction within Sessions Division Ferozepur.
- (ii) Petition filed by the applicant/petitioner, bearing No. GW/26/2022, under Sections 8 and 25 of the Guardians and Wards Act, 1890, titled as “Harjeet Kaur v. Jatinder Singh”, pending in the Court of Additional Principal Judge, Family Court, Amritsar, is also transferred to a Court of competent jurisdiction within Sessions Division Ferozepur.
- (iii) Learned District Judge, Amritsar/Principal Judge, Family Court/Additional Principal Judge, Family Court, Amritsar, is directed to transfer complete record pertaining to the aforementioned cases to learned District Judge, Ferozepur, by directing both the sides to appear before the Court of learned District Judge, Ferozepur, on a particular date to be fixed by him/her, for further proceedings.
- (iv) On receipt of record of the cases, learned District Judge, Ferozepur, will either keep the said cases in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Ferozepur, to try the same, in accordance with law.
- (v) The concerned Court at Ferozepur, shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.
- (vi) After transfer at Ferozepur, the concerned Court will accommodate the parties to the *lis* with at least one date in a calendar month.

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12. A copy of this order be sent to learned District Judges concerned, through email as well.

Petitioner through her counsel, is also directed to ensure her appearance accordingly.

Petition stands **disposed of** in above terms.

Pending misc. application(s) are also disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

December 11, 2023
Pkapoor

Whether speaking/reasoned? **✓Yes/No**
Whether reportable? **✓Yes/No**