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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

TA-1028-2023

Decided on: 07.12.2023

Meenu

...Applicant/Petitioner

Versus

Krishan Deshwal

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Akashdeep Singh, Advocate
for the applicant-petitioner.

Mr. P.S. Poonia, Advocate and
Mr. Pulkit Nanda, Advocate
for the respondent(s).

SANJAY VASHISTH, J. (Oral)

1. Mr. P.S. Poonia, Advocate, puts in appearance on behalf of the respondent, and files his Power of Attorney, in Court today, which is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

2. Present transfer application, under Section 24 CPC, has been filed by the petitioner - wife, for seeking transfer of the petition, bearing No. HMA-210-2023, filed by the respondent – husband, under Section 13 (ia) (ib) of the Hindu Marriage Act, 1955, titled as “Krishan Deshwal v. Meenu”, presently pending in the Court of Principal Judge, Family Court, Jhajjar (Camp Court at Bahadurgarh), to any Court of competent jurisdiction at Rohtak.

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

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following grounds:-

- i) Petitioner-wife and respondent-husband got married on 08.07.2003, at Rohtak, according to the Hindu rites and ceremonies.
- ii) Out of the said wedlock, two children, namely, Aman (son) and Yashika (daughter), now aged about 13 years and 17 years, respectively, were born, who are minor and staying/residing with the mother (petitioner herein).
- iii) Petitioner-wife has no independent source of income and she is dependant upon/residing with her parents at Rohtak, whereas, respondent-husband is in Govt. Service, and thus, earning about Rs.1.00 lakh p.m.
- iv) Present place of residence of the applicant/petitioner to Jhajjar, is at a distance of about 40 Kms. (one side), thus, causing extreme hardships to the petitioner-wife.
- v) Since the petitioner-wife is residing with her parents in a village, which lacks convenient transportation options, thus, she is compelled to rely on public transit, resulting in significant hardships.
- vi) 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.
- vii) Already a petition under Sections 7 & 25 of the Guardian and Wards Act, filed by the respondent-husband is pending consideration at Rohtak.

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vii) Besides above, learned counsel submits that respondent-husband is serving in the Central Industrial Security Force (CISF), and the Headquarter is at Delhi. Even for attending the Courts, in any case, respondent has to travel from Delhi to Bahadurgarh, and it will not make any difference, if the respondent-husband has to travel from Delhi to Rohtak. On the other hand, applicant-petitioner has to look after her two minor children. Even the daughter Yashika (aged about 17 years) is attending her study programme at IIT FIITJEE in Delhi. Health condition of the father of the applicant-petitioner is also not good, as he is suffering from prostate cancer, due to which, all the time, he requires someone as helping hand. In support of this contention, medical documents have also been appended with present petition as Annexure P-6.

3. On the other hand, on a specific query by this Court that once respondent-husband is admittedly appearing in a case at Rohtak, then how would it make any difference for him to travel from Delhi to Rohtak in the present case well, learned counsel for the respondent has not been able to controvert the same.

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

5. In the facts and circumstances similar to the present case, 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.”

6. 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.”

7. 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

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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.”

8. 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;
- (h) Accessibility of the location from where the wife resides to the court where the case is pending;
- (i) 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.

9. Considering the aforementioned settled legal proposition of law and facts of the present case, the submission made by learned counsel for the respondent is not tenable and the same is hereby rejected.

10. Thus, applying the principles of law, laid down by Hon'ble the

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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, by issuing following directions:

- (i) Petition filed by respondent - husband under Section 13 of the Hindu Marriage Act, 1955, bearing No. HMA-210-2023, titled as “Krishan Deshwal v. Meenu”, pending in the Court of Principal Judge, Family Court, Jhajjar (Camp Court at Bahadurgarh), is transferred to a Court of competent jurisdiction within Sessions Division Rohtak.
- (ii) Learned District Judge, Jhajjar, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Rohtak, by directing both the sides to appear before the Court of learned District Judge, Rohtak, on a particular date to be fixed by him, for further proceedings.
- (iii) On receipt of record of the case, learned District Judge, Rohtak, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Rohtak, to try the same.
- (iv) The concerned Court at Rohtak, shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.
- (v) After transfer at Rohtak, the concerned Court will accommodate the parties to the *lis* with at least one date in a calendar month.

11. For compliance of the order passed by this Court, Registry is directed to transmit copies of this order forthwith to learned District Judge,

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Jhajjar and learned District Judge, Rohtak, through email(s) as well.

Parties through their counsel are also directed to ensure their appearance accordingly.

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

(SANJAY VASHISTH)
JUDGE

07.12.2023
J.Ram

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