

TA-1025-2023

- 1 -

229 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

TA-1025-2023
Decided on: 05.12.2023

Vandna Rani

...Applicant/Petitioner

Versus

Bhawnish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Gursewak Singh, Advocate
for the Applicant/petitioner.

SANJAY VASHISTH, J. (Oral)

1. Present transfer application, under Section 24 CPC, has been filed by the petitioner - wife, for seeking transfer of the petition filed by the respondent – husband under Section 13 of the Hindu Marriage Act, 1955, bearing No. HMA/6/2022, titled as “Bhawnish Kumar vs. Vandna Rani”, presently pending in the Court of Principal Judge, Family Court, Samana, District Patiala to the Court of competent jurisdiction at Guhla, District Kaithal.

2. The present transfer petition has been filed, *inter alia*, on the following grounds:-

- i) Petitioner-wife and respondent-husband got married on 26.08.2016, at Cheeka, Tehsil Guhla, District Kaithal, according to the Hindu rites and ceremonies.
- ii) Out of the said wedlock, one male child namely Satvik now aged 5 years was born and is residing with the applicant-petitioner and studying in Junior K.G. at Guhla.
- iii) Petitioner-wife has no independent source of income and she is

TA-1025-2023

- 2 -

dependant upon/residing with her parents at Cheeka.

- iv) Present place of residence of the applicant/petitioner to Samana, is at a distance of about 30 kilometres, thus, causing extreme hardships to the petitioner-wife as well as minor child.
- v) Since the petitioner-wife is residing with her parents which lacks convenient transportation options, thus, she is compelled to rely on public transit, resulting in significant hardships.
- vi) Petitioner-wife has also instituted a complaint bearing No.COMA No.4 of 2022 under Section 12 read with Sections 17, 18, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005, which is pending before learned Sub Divisional Judicial Magistrate at Guhla. She has also filed one petition bearing No.MNT 125 No.23 of 2022 under Section 125 Cr.P.C., for grant of maintenance before learned Principal Judge, Family Court at Guhla.

3. Mr. Dhiraj Jindal, Advocate, puts in appearance on behalf of respondent, and files his memo of appearance, which is taken on record, subject to all just exceptions. Office to tag the same at appropriate place in case file.

Counsel for the respondent states that in fact, from the residence where the applicant is residing i.e. Cheeka, Courts at Samana are at the distance of 16 kilometres. Thus, request for transfer of the divorce petition made by counsel for the applicant/petitioner from the Courts at Samana to the Courts at Cheeka is not genuine one.

4. I have heard learned counsel for the parties and gone through

TA-1025-2023

- 3 -

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

TA-1025-2023

- 4 -

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.”

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

TA-1025-2023

- 5 -

aspects would ensure a just and equitable decision in such cases.

9. Considering the distance from the residential place of the applicant to the Courts at Samana, District Patiala, where the proceedings are to be attended is not that far away which may cause any problem for the applicant for travelling there, but taking note of the fact that one minor son aged 5 years is residing with the applicant and is studying at school in Cheeka and two other cases i.e. petition under Protection of Women from Domestic Violence Act, 2005 and petition under Section 125 Cr.P.C. filed by applicant-petitioner are also pending in the Family Court at Guhla, District Kaithal, this Court is of the view that 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 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/6/2022, titled as "Bhawnish Kumar vs. Vandna Rani", presently pending in the Court of Principal Judge, Family Court, Samana, District Patiala, is transferred to a Court of competent jurisdiction within Sessions Division Kaithal.
- (ii) Learned District Judge, Patiala, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge,

TA-1025-2023

- 6 -

Kaithal, by directing both the sides to appear before the Court of learned District Judge, Kaithal, on a particular date to be fixed by him, for further proceedings.

- (iii) On receipt of record of the case, learned District Judge, Kaithal, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Kaithal, to try the same.
- (iv) The concerned Court at Kaithal, 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 Kaithal, 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, Patiala and learned District Judge, Kaithal, 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

05.12.2023
Lavisha

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