

TA-1075-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
TA-1075-2023 (O&M)
Decided on: 13.12.2023

Sunita

...Applicant/Petitioner

Versus

Pushpender Kanwar

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Naresh Kumar Khepar, Advocate
for the Applicant/petitioner.

None for the respondent.

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, bearing No. DMC/23/2023, filed by the respondent – husband, under Section 13(1)(ia) of the Hindu Marriage Act, 1955, titled as “Pushpender Kanwar v. Sunita”, presently pending in the Court of Ld. Principal Judge, Family Court, Rewari, to any Court of competent jurisdiction at Gurugram.

2. In the present case, for securing the presence of the respondent, notice of motion was issued on 24.08.2023. However, as per office report, notice issued to the respondent has been received back with report that he has left this address. This Court has noticed that address of the respondent-husband, as given in the present transfer petition, is the same, which has been mentioned by the respondent-husband himself in the divorce petition filed by him under Section 13(1)(ia) of the Hindu Marriage Act, 1955, in the

year 2023 only. Therefore, this fact is enough for this Court to reach to the conclusion that the service upon the respondent-husband has been duly affected, as he is deliberately avoiding the service in the present case.

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

- i) Petitioner-wife and respondent-husband got married on 18.02.2022, at Gurugram, according to the Hindu rites and ceremonies, and no child is born out of the said wedlock.
- ii) Petitioner-wife is unemployed, and she has no source of income. She is fully dependent upon her parents.
- iii) Distance from Rewari to Gurugram, is about 60 Kms. (one side), which takes around 1:00-1:30 hours, thus, causing extreme hardships to the petitioner-wife.
- iv) 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.
- v) 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.
- vi) Besides above, two litigations i.e. (i) Petition under Sections 12/18/19/20/22/23 of the Protection of Women from Domestic Violence Act, 2005, vide case bearing No.284, dated 10.08.2023 in the Court of Ld. JMIC, District Gurugram; and (ii) a complaint has also been filed by the applicant-petitioner against the respondent-husband and his family before the Women Police Station, Gurugram, and the police officials have already called both the parties for counseling.

4. I have heard learned counsel for the petitioner 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 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. As already noticed above, despite service and opportunity, the

respondent-husband has chosen, not to appear in the present proceedings. Without commenting on the said issue, this Court deems it appropriate to proceed with the prayer of the present applicant-petitioner.

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. DMC/23/2023, titled as "Pushpender Kanwar v. Sunita", pending in the Court of Ld. Principal Judge, Family Court, Rewari, is transferred to a Court of competent jurisdiction within Sessions Division Gurugram.
- (ii) Learned District Judge, Rewari, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Gurugram, by directing both the sides to appear before the Court of learned District Judge, Gurugram, on a particular date to be fixed by him, for further proceedings.
- (iii) On receipt of record of the case, learned District Judge, Gurugram, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Gurugram, to try the same.
- (iv) The concerned Court at Gurugram, shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.

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(v) After transfer at Gurugram, 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, Rewari and learned District Judge, Gurugram, through email(s) as well.

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

(SANJAY VASHISTH)
JUDGE

13.12.2023
J.Ram

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