

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

TA No.1156-2022

Date of decision: 31.01.2023

Parminder Kaur

...Petitioner(s)

Vs

Natha Singh & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ruhani Chadha, Advocate for the petitioner.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of petition bearing No.GW/449/2021 filed by respondent-husband under Section 7 of the Guardian and Wards Act, 1890, titled "Natha Singh vs. General Public & Another" pending in the Court of Principal Judge, Family Court, Kapurthala, to a Court of competent jurisdiction at Jalandhar.

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

i) that the parties were married on 26.01.2009 according to Sikh rites and rituals.

ii) that two children were born out of the wedlock on 02.08.2010 and 05.01.2012;

iii) that the petitioner along with children is living at Jalandhar.

iv) that a petition under Section 9 (B) and 37(2)(c) of the Protection of Women from Domestic Violence Act, 2005 is pending at Phillaur, Jalandhar.

3. Although, 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. 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."

6. 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.”

7. 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.

8. 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/449/2021 filed by respondent-husband under Section 7 of the Guardian and

Wards Act, titled “Natha Singh vs. General Public” pending in the Court of Principal Judge, Family Court, Kapurthala, is transferred to a Court of competent jurisdiction at Jalandhar.

b) The learned District Judge, Kapurthala is directed to transfer complete record pertaining to the aforesaid case to District Judge, Jalandhar.

c) The parties are directed to appear before the District & Sessions Judge, Jalandhar on 28.02.2023.

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

9. The concerned Court at Jalandhar 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.

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

Disposed of.

31.01.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No