

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Transfer Application No. 1176 of 2022

Date of decision: 04.01.2023

Murti

.....Petitioner

vs

Mala Ram alias Ami Lal

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. C.R. Narwal, Advocate
for the petitioner.

None for the respondent.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 13(1) of the Hindu Marriage Act, 1955 (for short 'the Act') titled "Mala Ram versus Murti" pending in the Court of Principal Judge, Family Court, Rohtak to a Court of competent jurisdiction at Hisar.

Though notice issued to the respondent has been received with the report that he is not residing in the village but in the mediation proceedings, the respondent has put in appearance before the Mediator, Mediation Centre, Hisar and joined the proceedings. Therefore, as the matter is in the knowledge of the respondent and he is not appearing before this Court, accordingly, this petition is being decided in his absence.

2. Learned counsel for the petitioner has contended :-

- i) That the parties were married in June 1989 according to Hindu rites and rituals.

- ii) That two daughters and one son were born out of this wedlock, who all are presently married and settled.
- iii) That the petitioner-wife (about 50 years of age), is living separately from the respondent-husband (about 51 years of age), since the last six years and living with her parents at their mercy at Hisar.
- iv) That the petitioner is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband, who is working as Mali-cum-Chowkidar in Bal Bhawan, Rohtak, and besides this he is earning more than Rs.50,000/- per month from agriculture and is not paying anything to her towards maintenance.
- v) The respondent-husband has filed the petition under Section 13(1) of the Hindu Marriage Act, which is pending before the Principal Judge, Family Court, Rohtak.
- vi) The proceedings arising out of petition under Section 125 Cr.P.C. filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Hisar.
- vii) That the distance between place of residence of the petitioner-wife i.e. Hisar and the place of proceedings under Section 13(1) of the Hindu Marriage Act, 1955 filed by the respondent-husband, pending before the Principal Judge, Family Court, Rohtak, is about 120 kilometers of one side.
- viii) That there is no proficient male member in the family of the petitioner, who can accompany her to the Court of proceedings at Rohtak.
- ix) That the respondent just to harass the petitioner, filed petition under Section 13(1) of the Act at Rohtak, rather, he is resident of Village Arya Nagar, Hisar having his own house and agricultural land in that village. The fact about his residential address is also proved in his own petition under Section 13(1) of the Act, wherein, in the

memo of parties he has shown himself to be resident of Village Arya Nagar, District Hisar.

3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

4. Vide order dated 29.9.2022 passed by Co-ordinate Bench of this Court, the matter was referred to the Mediation and Conciliation Centre, Hisar, where the parties remained present but as per report of the Mediator dated 31.10.2022, despite best efforts, the mediation has failed.

5. I have heard learned counsel for the petitioner.

6. The legal position in such like cases as the present one, 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."

7. 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.”

8. 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.

9. In view of the facts mentioned above and 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 filed by respondent husband under Section 13(1) of Hindu Marriage Act, 1955, titled as 'Mala Ram vs. Murti', pending in the Court of Principal Judge, Family Court, Rohtak is transferred to a Court of competent jurisdiction at Hisar.
- b) The Id. District Judge, Rohtak is directed to transfer complete record pertaining to the aforesaid case to District Judge, Hisar.
- c) The parties are directed to appear before the District & Sessions Judge, Hisar, on 07.02.2023.
- d) The District Judge, Hisar will assign the said petition to the Court of competent jurisdiction.

10. The concerned Court at Hisar 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.

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

12. I am supported by the decisions rendered by a Co-ordinate Bench of this Court in **TA No. 1315/2022, Rohini Arora v Nitin Talwar; TA No. 1322 of 2022, Jaswinder Kaur v Gurvinderjeet Singh; and TA No. 1323 of 2022, Usha Rani v Karmajit Singh.**

Disposed of.

Pending application(s), if any, stands disposed of.

January 04, 2023

Vijay Asija

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

YES/NO
YES/NO