

TA 1222/2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

TA 1222/2022

Date of decision: 17/02/2023

Madhu Gargi and others

.....Appellant

Vs.

Mukul Gupta

.....Respondent

**CORAM      HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:-      Mr. Subhash Mehta, Advocate for the applicant.  
                    Mr. Bhavpreet Singh Dhatt, Advocate for the respondent.

**Nidhi Gupta, J.**

Prayer in this petition u/s 24 CPC is for transfer of Civil Suit for permanent injunction bearing CS No.795/2022 dated 26.5.2022 titled as 'Mukul Gupta v Madhu Gargi and others', from the court of CJM, Moga to a court of competent jurisdiction at Gurugram.

Facts giving rise to the present Transfer Application are that marriage between respondent-Mukul Gupta and Shma Priya was solemnized on 24.11.2019 at Jalandhar. Shma Priya is daughter of petitioner no.1; sister

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of petitioner no.2; and sister-in-law (Nanad) of petitioner no.3, while petitioner no.4 is father of petitioner no.3.

Shma Priya and respondent Mukul Gupta cohabited together as husband and wife, but no issue was born out of their wedlock. Since both of them could not pull together as husband and wife, respondent filed a petition u/s 12 of the Hindu Marriage Act, 1955 against his wife at Moga. On an application bearing TA 1253/2021 moved by Shma Priya, the said petition u/s 12 was transferred by this Court, vide order dated 10.3.2022 (Annexure P-2) from the Court at Moga to Family Court, Gurugram. Simultaneously, Shma Priya filed a petition u/s 12 of the Domestic Violence Act, 2005 at Gurugram. It is alleged by the petitioners that the present suit, transfer of which is sought from Moga to Gurugram, is a counterblast to the said petition u/s 12 of the DV Act filed by Shma Priya, wherein Shma Priya has intentionally not been made a party.

It is submitted by the learned counsel for the petitioner that the said frivolous and vexatious suit, wherein every family member of Shma Priya, including the father of her Nanad has been arrayed, is a pressure tactic to overcome the hassle created by the order dated 10.3.2022 (Annexure P-2). It is further submitted that the said suit has been instituted at Moga in order to harass the entire family of Shma Priya, who are all residents of Gurugram. In support of prayer made in this petition, it is averred that the petition u/s 12 of the HMA filed by respondent, as well as the complaint filed by Shma Priya under the D.V. Act, are already pending at Gurugram and in case the present suit is also transferred to Gurugram, proceedings in all these cases can be easily managed by both sides. It is further stated that the respondent is duly

appearing in the said litigations pending in Gurgaon. Apprehensions have also been expressed in attending the proceedings at Moga.

Upon notice, written statement has been filed.

It is submitted by the learned counsel for the respondent that present suit cannot be characterized as “matrimonial proceeding” as Shma Priya is not a party to the said suit. It is further denied that the suit filed by the respondent is a counterblast to the complaint under the DV Act filed by Shma Priya. It is further submitted that convenience cannot be the solitary ground for transfer of proceedings u/s 24 CPC. It is submitted that the present petitioners are not under any medical disability, and therefore, protection of the judgments in favour of the wife in similar cases, cannot be extended to the petitioners who are healthy males. Reliance has been placed upon **Veena v. Vinay Kumar, 1992(1) HLR 380**. By referring to **Rubalpreet Kaur v Harbarkamaljot Singh, 2019(4) RCR (Civil) 198**, it is then submitted that apprehension of harm is also not a ground to transfer the case and the aggrieved party may approach law enforcement agencies for redressal.

No other argument has been raised on behalf of the parties.

Heard ld. Counsel for the parties.

Admittedly, though Shma Priya, wife of respondent is not a party to the present suit, however, it cannot be denied that the present suit, transfer of which is being sought, emanates from the matrimonial dispute between the respondent and Shma Priya. Headnote of the suit reveals it to be *a suit for permanent injunction and damages on account of cheating, extortion, harassment, mental torture, intimidation and defamation*. Even a perusal of the plaint Annexure P-1, is replete with allegations against said

Shma Priya. In fact, contents of the suit are almost identical to the complaint u/s 200 r/w 190 Cr.PC Annexure R-3, filed by the mother of the respondent against Shma Priya. Therefore, it is clear that the suit/ subject matter of the present proceeding has direct nexus with the matrimonial dispute between the parties. Moreover, petitioner no.1 and 4 aged 57 and 58 years respectively are residing at Gurugram who will have to attend the proceedings at Moga which is at a distance of about 380 kilometers from Gurugram. It is also borne out from the facts noticed above that petition u/s 12 of the Hindu Marriage Act, 1955 filed by respondent and complaint under the D.V. Act, instituted by Shma Priya is pending at Gurugram and respondent is a party therein and thus required to visit Gurugram to attend those proceedings.

Accordingly, in view of the undisputed position as above, this Court deems it fit to allow the present petition.

Moreover, the law regarding all disputes arising from matrimonial discord is very clear and unequivocal. Reference may be made to **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha,** 2022 Live Law (SC) 627; and **“Sumita Singh vs Kumar Sanjay”, 2002 SC 396** and **“Rajani Kishor Pardeshi vs Kishor Babulal Pardeshi”, 2005(12) SCC 237**

For the reasons stated above, the present Transfer Application is allowed with the following directions:-

- a) Civil Suit for permanent injunction bearing CS No.795/2022 dated 26.5.2022 titled as Mukul Gupta v Madhu Gargi and others, is transferred from the court of CJM, Moga to a court of competent jurisdiction at Gurugram.
- b) The Id. District Judge, Moga is directed to transfer complete record pertaining to the aforesaid case to District Judge, Gurugram.

c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Gurugram on 24.3.2023.

d) The District Judge, Gurugram will assign the said case to a Court of competent jurisdiction.

The Court concerned, at Gurugram will accommodate them with one date in one calendar month.

**17/02/2023**  
Joshi

**(Nidhi Gupta)**  
**Judge**

**Whether speaking/reasoned**  
**Whether reportable**

**Yes**  
**Yes/No**