

TA-1261-2022

2023:PHHC:157088

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204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

TA-1261-2022

Date of decision :07.12.2023

Dishima Sharma @ Dishima Sapra

...Petitioner

Vs.

Akshansh

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Rakesh Gupta, Advocate for the petitioner.

Mr. Jagjit Singh, Advocate for
Mr. Neeraj Yadav, Advocate
for the respondent.

SANJAY VASHISTH, J.

1. Present transfer application, under Section 24 CPC, has been filed by the petitioner - wife, for seeking transfer of the petition, bearing No. DMC/420/2022, filed by the respondent – husband, under Section 13 (1) (ia) of the Hindu Marriage Act, 1955, titled as “*Akshansh Vs. Dishima*”, presently pending in the Court of Principal Judge, Family Court, Rewari, to any Court of competent jurisdiction at Ambala.

2. Service upon respondents have been effected in July 2023 but till date, no reply has been filed.

3. Learned counsel appearing on behalf of the respondent again makes a request for granting an opportunity for filing reply.

4. No more time can be granted, thus, request declined.

5. In paragraph no. 15 of the present transfer application, it has been pleaded that under the pretext of entering into compromise, respondent has

already succeeded in making applicant to withdraw the criminal cases

including CRWP No. 5142 of 2021 with regard to the release of the custody of the minor daughter.

5. Rather respondent is a permanent resident of Delhi and there is no connection of him with Rewari, still the Divorce petition No. DMC/420/2022, under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 has been filed in the Family Court, Rewari, just to harass the applicant-wife. Even, respondent and his mother both are practicing in the Court at Tis Hazari, Delhi. In regard to the submissions addressed, pleadings raised in paragraphs 15 and 18 of the petition, are reproduced here under:-

“15. That just to save their skin from the prosecution in the above said FIR, the respondent and his mother cleverly entered into a compromise with the petitioner on 18.06.2021 and took the petitioner to Delhi i.e. the matrimonial house of the petitioner. Basing upon the said compromise, the respondent and his mother filed a petition before this Hon'ble Court seeking quashing of FIR vide CRM-M No.53003 of 2021, which was allowed vide order dated 22.03.2022, a true copy of which is annexed herewith as Annexure P-1.

18. That it is relevant to mention here that even the said petition filed by the respondent is not maintainable in the Family Court at Rewari as the petitioner and the respondent never resided in Rewari. The permanent place of abode of respondent and matrimonial house of the petitioner is at Delhi. Moreover, the respondent and his mother (the mother-in-law of the petitioner) are practicing advocates and the mother-in-law of the petitioner is practicing at Tis Hazari Court, Delhi. The respondent has cleverly mentioned some temporary address of Rewari in his petition just to make his case under the jurisdiction of

Rewari courts. The petitioner is not known to the said address of the respondent except his address at Delhi as she never resided at Rewari and always resided at her matrimonial house in Delhi only.”

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

- i) Petitioner-wife and respondent-husband got married on 19.11.2018, at Forever Banquet, New Delhi, according to the Hindu rites and ceremonies.
- ii) Out of the said wedlock, one daughter, namely, Akshima, now aged about about 03 years, was born, who is minor and staying/residing with the respondent - husband.
- iii) Petitioner-wife has no independent source of income and she is dependant upon/residing with her parents at Ambala.
- iv) The distance between Rewari and Ambala is about 280 Kms. (one side), thus, causing extreme hardships to the petitioner-wife.
- v) Since the petitioner-wife is residing with her parents in a village, which lacks convenient transportation options, thus, she is compelled to rely on public transit, resulting in significant hardships.
- vi) 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.

7. On the other hand, Mr. Jagjit Singh, Advocate, learned counsel for the respondent-husband vehemently argues that the minor child, who is aged about 03 years, is residing with the respondent-husband and he is looking after

her day-to-day needs, apart from education. Therefore, he opposes the prayer made in the present application for transfer of case from Rewari to Ambala.

8. Neither by way of reply nor today at the time of submission, learned counsel for respondent could satisfy the Court that for what special reason the Divorce Petition has been filed in the Court at Rewari, whereas, he and his family both are residing in the area of Delhi.

9. I have heard learned counsel for the parties and gone through the material available on record.

10. 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.”

11. 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.”

12. 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.”

13. 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.

14. 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.

15. 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/420/2022, under Section 13 (1) (a) of the Hindu Marriage Act, 1955, titled as "*Akshansh Vs. Dishima*", pending in the Court of Principal Judge, Family Court, Rewari, is transferred to a Court of competent jurisdiction within Sessions Division Ambala.
- (ii) Learned District Judge, Rewari, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Ambala, by directing both the sides to appear before the Court of learned District Judge, Ambala, on a particular date to be fixed by him, for further proceedings.
- (iii) On receipt of record of the case, learned District Judge, Ambala,

will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Ambala, to try the same.

- (iv) The concerned Court at Ambala, 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 Ambala, the concerned Court will accommodate the parties to the *lis* with at least one date in a calendar month.

16. 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, Ambala, through email(s) as well.

Parties through their counsel are also directed to ensure their appearance accordingly.

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

07.12.2023

neeraj

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No

(SANJAY VASHISTH)
JUDGE