

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

136

TA-1282-2023 (O&M)
Date of decision: 05.10.2023

Mandeep**...Petitioner**

Versus

Rohtash**...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Santosh Kumar, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 9 of the Hindu Marriage Act, 1955 as well as the petition filed under Sections 7, 10, 12, 17 and 25 of the Guardian and Wards Act, pending before the Family Court, Karnal to the competent Court of jurisdiction at Rajpura, District Patiala.

Learned counsel for the petitioner has argued that three minor children are residing in the care and custody of the petitioner at Rajpura, District Patiala, which is apparent from the stand taken by the respondent-husband in paragraph No. 7 of the petition filed under the Guardian and Wards Act. Learned counsel further submits that even in paragraph No. 8 of the petition filed under Section 9 of the Hindu Marriage Act, the same stand is taken by the respondent-husband with regard to custody of the children.

Learned counsel for the petitioner further argued that even otherwise, as per Section 9 of the Guardian and Wards Act, the jurisdiction will lie at the place, where the minor children are residing.

Learned counsel further submitted that the petitioner, along with minor children, is residing at her parental home at the mercy of her parents as she has no independent source of income, however, the respondent-husband has filed the aforesaid petitions at Karnal in order to harass the petitioner. It is further submitted that the petitioner is facing great difficulty in prosecuting the said cases, as there is a distance of about 110 Kms between the aforesaid two places.

Learned counsel has relied upon the judgments ***Sumita Singh Vs. Kumar Sanjay, 2002 SC 396*** and ***Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi, 2005(12) SCC 237***, wherein the Hon'ble Supreme Court 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.”*

Learned counsel for the petitioner has further relied upon ***2022 Live Law (SC) 627 N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha***, wherein 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.”

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 family condition of the wife, custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important, 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.

After hearing the counsel for the petitioner, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner-wife will have to bear the litigation expenses and transportation expenses and in view of the fact that in case notice of motion is issued, even the respondent/husband has to bear the litigation expenses and in also in view of the judgments rendered in *Sumita Singh's* case, *Rajani Kishor*

Pardeshi's case as well as ***N.C.V. Aishwarya's*** case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

- (i) *The aforesaid petitions, pending before the Family Court, Karnal will be transferred to the competent Court of jurisdiction at Rajpura, District Patiala.*
- (ii) *The District Judge, Patiala will assign the said petitions to the competent Court of jurisdiction.*
- (iii) *The Family Court, Karnal is directed to transfer all the record pertaining to the aforesaid cases to District Judge, Patiala.*
- (iv) *The parties are directed to appear before the trial Court at Rajpura within a period of 01 month from today.*
- (v) *The Courts concerned, where the cases are pending between the parties, will accommodate them with one date in a calendar month.*

However, liberty is granted to the respondent-husband to revive this petition, if he intends to contest the same, provided that:-

- (i) *The respondent will clear all the arrears of maintenance amount, if any, in terms of the petition filed by the petitioner either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.*
- (ii) *The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Karnal, on each and every date of hearing.*
- (iii) *The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the*

petitioner to pursue the case at Karnal, in case the respondent opts to contest this petition.

05.10.2023

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No