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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 06.11.2023

Mamta

. . . Petitioner(s)

Versus

Naveen

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Ms. Anu Bala Garg, Advocate
for the petitioner(s).

None for the respondent, despite service.

SANJAY VASHISTH, J. (Oral)

1. Prayer in this petition filed under Section 24 of CPC, is for seeking transfer of the petition filed by the respondent-husband, under Section 13 of the Hindu Marriage Act, 1955 (in short, 'HMA'), bearing no. DMC/140/2022, titled as, 'Naveen vs. Mamta', pending in the Court of Principal Judge, Family Court (Camp Court), Gohana to the court of competent jurisdiction at Charkhi Dadri.

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

- i) That the marriage between the petitioner and respondent was solemnized on 05.06.2021, according to Hindu rites and ceremonies. Said marriage was performed at Village Makdana, Tehsil and District Charkhi Dadri.
- ii) That there is no child out of the said wedlock.
- iii) That the parties are living separate since 02.03.2022, and petitioner-wife has no source of income, thus having financial constraints, while, the respondent-husband is working in Army and earning handsome money.

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- iv) That already two litigations instituted by the petitioner-wife against the respondent-husband, are pending at Courts in Charkhi Dadri i.e. (i) petition under Section 9 of the Hindu Marriage Act, 1955, bearing No. DMC/73/2022, and (ii) petition under Section 12 of the Protection of women from Domestic Violence Act, 2005, bearing CIS No.COMA/29/2022.
- v) That traveling from Gohana to Charkhi Dadri, is a distance of around 100 kms (one side), which takes around 2-3 hours, thus, causing extreme hardships to the petitioner-wife.
- v) That the petitioner-wife is financially dependent on her parents and lacks convenient transportation options, thus, is compelled to rely on public transit, resulting in significant hardships.

3. Counsel for the petitioner also submits that transfer of the divorce petition at District Courts, Charkhi Dadri, would be conducive for both the sides, because, already the respondent – husband is facing proceedings in two cases at Charkhi Dadri (as detailed here-above).

4. Heard.

5. There is no representation on behalf of the respondent-husband, despite service.

6. 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.”

7. Further, Hon’ble the Apex Court in **Rajani Kishor Pradeshi vs 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.*”

8. However, to avoid any misuse of the lenient view by the female litigants, Hon’ble the Apex Court in **Anindita Das vs. 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

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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.”

9. 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.

10. 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 with the following directions:

- (i) The petition filed by respondent - husband under Section 13 of Hindu Marriage Act, 1955, bearing no. DMC/140/2022, titled as “Naveen vs. Mamta”, pending in the Court of Ld. Principal Judge, Family Court (Camp

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Court), Gohana is transferred to a Court of competent jurisdiction at Charkhi Dadri.

- (ii) The Ld. District Judge, Sonapat is directed to transfer complete record pertaining to the aforesaid case to District Judge, Charkhi Dadri, by directing both the sides to appear before the Court of Ld. District Judge, Charkhi Dadri, on a particular date for further proceedings.
- (iii) The District Judge, Charkhi Dadri will assign the said petition to the Court of competent jurisdiction.

11. The concerned Court at Charkhi Dadri shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.

12. The Court, where the matter is to be assigned after transfer will accommodate the parties to the *lis* with at least, one day in a calendar month.

13. However, liberty is granted to the respondent-husband to revive the petition, if so advised, to contest the same, provided that:

- (I) If the petitioner-wife has concealed any material fact or aspect while filing the current transfer application, with a purpose to mislead the Court for seeking transfer of the case.

OR

- (ii) If the respondent husband is suffering from any substantial physical or mental disability or ailment.

OR

- (iii) The respondent will clear all arrears of maintenance amount, if any, in terms of a 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, or under any other law.

AND

- (iv) The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending

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the Court proceedings at Gohana, on each and every date of hearing.

AND

- (v) The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Gohana in case the respondent opts to contest this petition.

14. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Charkhi Dadri, as per the direction of District Judge, Sonapat; it is also directed that a copy of this order be sent to the respondent through registered post, besides sending a copy of this order to the District Judges concerned through email. Petitioner through her counsel, present in the Court, is also directed to ensure her appearance accordingly.

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

(SANJAY VASHISTH)
JUDGE

November 06, 2023

J.Ram

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