

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(133)

TA-1348-2023 (O&M)
Date of decision: 13.10.2023

Kawaljeet Kaur
....Petitioner

Vs.

Gurtaran Singh
....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sukhveer S. Killianwali, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the respondent under Sections 6 & 8 of the Hindu Minority and Guardianship Act and Section 13 of the Hindu Marriage Act, pending before the Family Court, Giddarbaha, District Sri Muktsar Sahib to the competent Court of jurisdiction at Malout, District Sri Muktsar Sahib.

Learned counsel for the petitioner has argued that on account of matrimonial discord, the petitioner has filed a petition under Section 125 Cr.P.C. and a petition/complaint under the Protection of Women from Domestic Violence Act, 2005, which are pending before the SDJM, Malout. It is further submitted that interim maintenance is awarded, however, the respondent is not making the payment. It is also submitted that the

petitioner is facing great difficulty in prosecuting the petition filed by the respondent, as there is a distance of about 25 kms between Giddarbaha and Malout. It is next submitted that as per provisions of the Hindu Minority and Guardianship Act, jurisdiction to file a petition for guardianship would lie with the Court, within whose jurisdiction the minor child is residing i.e. Malout.

Learned counsel has further contended that the petitioner is having two minor children, who are living in her care and custody and it is very difficult for her to pursue the cases at Giddarbaha, as the respondent is already appearing in two cases, as noticed above, at Malout.

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 has further relied upon **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, 2022 Live Law (SC) 627**, wherein the Hon'ble Supreme Court held as under: -

"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.

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 even in case notice of motion is issued, even the respondent/husband has to bear the litigation expenses and in view of the judgments in **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 deem it appropriate to allow the present petition, subject to the following conditions:-

- 1. The petition filed by the respondent under Sections 6 & 8 of the Hindu Minority and Guardianship Act and Section 13 of the Hindu Marriage Act, pending before the Family Court, Giddarbaha, District Sri Muktsar Sahib will be transferred to the competent Court of jurisdiction at Malout, District Sri Muktsar Sahib.*
- 2. The District Judge, Sri Muktsar Sahib will assign the said petition to the competent Court of jurisdiction at Malout.*
- 3. The Family Court, Giddarbaha is directed to transfer all the record pertaining to the aforesaid case(s) to Family Court, Malout.*
- 4. The parties are directed to appear before the Family Court, Malout within a period of 01 month from today.*
- 5. The Family Court, Malout will make all the endeavour to refer*

the case before the Mediation and Conciliation Centre for exploring the possibility of amicable settlement between the parties.

6. *The Court concerned, where the litigations between the parties are pending, will accommodate them with one date in one calender month.*

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

- (a) 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.*
- (b) The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Giddarbaha, on each and every date of hearing.*
- (c) The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Giddarbaha, in case the respondent opt to contest this petition.*

Present petition is disposed of accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

13.10.2023
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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No