204 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**
TA-1509-2022 (O&M)
Decided on: 04.12.2023

Rina Sheorana

...Applicant/Petitioner

Versus

Nishu Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ajit Sihag, Advocate
for the Applicant/petitioner.

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SANJAY VASHISTH, J. (Oral)

1. Present transfer application, under Section 24 CPC, has been filed by the petitioner - wife, for seeking transfer of the petition, bearing No. HMA/823/2022, filed by the respondent – husband, under Section 13 of the Hindu Marriage Act, 1955, titled as "Nishu Kumar v. Rina Sheorana", presently pending in the Court of Principal Judge, Family Court, Sirsa, to any Court of competent jurisdiction at Hisar.

2. As per the office report, notice issued to the respondent has been received back served through his mother. But none has appeared to represent him.

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

i) Petitioner-wife and respondent-husband got married on 19.02.2019, at Hisar, according to the Hindu rites and ceremonies.

ii) Out of the said wedlock, there is no child.

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iii) Petitioner-wife is not earning anything, while the respondent-husband is serving in the Indian Army and is earning approximately Rs.50,000/- per month.

iv) To attend proceedings in the Court of Principal Judge, Family Court, Sirsa, applicant/petitioner has to cover a distance of about 100 KM (one side), thus, causing extreme hardships to the petitioner-wife.

v) 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.

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.

vii) Due to matrimonial discord, applicant/petitioner has also filed a petition under Section 9 of the Hindu Marriage Act, 1955, which is pending in the Family Court at Hisar.

4. I have heard learned counsel for the petitioner and gone through the material available on record.

5. 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*

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> *prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.*
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> *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."*

6. 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 ordinary be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships."*

7. 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."*

7. 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

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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;
(g) Accessibility of the location from where the wife resides to the court where the case is pending;
(h) 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.

8. 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. HMA/823/2022, titled as "Nishu Kumar v. Rina Sheorana", pending in the Court of Principal Judge, Family Court, Sirsa, is transferred to a Court of competent jurisdiction within Sessions Division Hisar.

(ii) Learned District Judge, Sirsa, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Hisar, by directing both the sides to appear before the Court of learned District Judge, Hisar, on a particular date to be fixed by

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him, for further proceedings.

(iii) On receipt of record of the case, learned District Judge, Hisar, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Hisar, to try the same.

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

9. In order to ensure appearance of the parties before learned District Judge, Hisar, as per the direction of learned District Judge, Sirsa, it is also directed that a copy of this order be sent to the respondent through registered post, besides sending copies of this order to learned District Judges concerned, through email as well.

Petitioner through her counsel, is also directed to ensure her appearance accordingly.

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

Pending misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

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Whether speaking/reasoned: Yes
Whether Reportable: No

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