

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

212

TA No.1541 of 2022 (O&M)

Date of decision: 23.02.2023

Sushma Devi

...Petitioner

v

Sanjeev Kumar

...Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. GS Sandhu, Advocate for the petitioner.

None for the respondent.

NIDHI GUPTA, J.(ORAL)

1. Prayer in this petition filed by petitioner wife is for transfer of the petition bearing No.HMA/750/2022 filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled "Sanjeev Kumar vs. Sushma Devi" pending in the Court of Principal Judge, Family Court, Kurukshetra to a court of competent jurisdiction at Karnal.

2. Learned counsel for the petitioner, inter alia, submits that:

- i) that the parties solemnized marriage on 05.12.2004.
- ii) that two children were born out of the wedlock.
- iii) that the petitioner along with her minor children is living with her parents at Karnal since 12.01.2021.
- iv) that the following cases are also pending between the parties at Karnal:-
 - a. Civil Suit for declaration with consequential relief of permanent injunction.
 - b. Petition under Section 125 Cr.P.C.
- v) that the petitioner has no source of income.
- vi) that vide order dated 20.01.2023 in TA No.83 of 2023, petition filed by respondent under the Guardian and Wards Act, has also been transferred to Karnal.

3. Office report shows that respondent has been served. However, there is no representation on his behalf.

4. I have heard learned counsel for the petitioner.

5. The legal position in such like cases as the present one, is well established. In this regard, judgment of the Hon'ble Supreme Court rendered in **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha," 2022 Live Law (SC) 627**, is most relevant wherein the 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.”

6. Further reliance can be placed upon the judgments in **“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 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.”

7. Even this Court in number of cases has followed the aforesaid principle of law. Accordingly, 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 the family condition of the wife, the custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important the 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.

8. After hearing the learned counsel for the petitioner and in view of the judgments i.e. **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 deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The petition bearing No.HMA/750/2022 filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled “Sanjeev Kumar vs. Sushma Devi” pending in the Court of Principal Judge, Family Court, Kurukshetra is transferred to a court of competent jurisdiction at Karnal.
- b) The Id. District Judge, Kurukshetra is directed to transfer complete record pertaining to the aforesaid case to District Judge, Karnal.
- c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Karnal on 17.03.2023.

d) The District Judge, Karnal will assign the said petition to the Court of competent jurisdiction.

9. The concerned Court at Karnal will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.

10. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

Disposed of.

23.02.2023

ashok

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

(Nidhi Gupta)
Judge