

TA-1434-2023

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

TA-1434-2023

Decided on : 06.11.2023

Tannu

. . . Applicant/Petitioner

Versus

Rajan

. . . Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Sandeep Saini, Advocate for
Mr. Sandeep Singh Jattan, Advocate, for the petitioner.

SANJAY VASHISTH, J. (Oral)

1. Present transfer application has been filed by the petitioner – wife, under Section 24 of CPC, for seeking transfer of the petition bearing No. DMC/710/2023 filed by the respondent - husband under Section 9 of the Hindu Marriage Act, 1955, for Restitution of Conjugal Rights, titled as “Rajan v. Tannu ” pending in the Court of Ld. Principal Judge, Family Court, Rohtak to any court of competent jurisdiction at Yamuna Nagar at Jagadhri.

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

- i) That the petitioner-wife and respondent-husband got married on 22.02.2023, according to the Hindu rites and ceremonies. It is the second marriage of both, petitioner as well as respondent.
- ii) That there is no child out of the said wedlock.
- iii) That the petitioner-wife has no source of income, whereas, respondent-husband is well established in all ways.
- iv) That already two litigations instituted by the petitioner-wife against the respondent-husband are pending at Courts in Yamuna Nagar at Jagadhri i.e. under Section 12 of the Protection of women from Domestic Violence Act, 2005 and Section 125

TA-1434-2023

- 2 -

Cr.P.C. for grant of maintenance. Besides, one police complaint is also pending before SP, Yamuna Nagar.

- v) That traveling distance from Yamuna Nagar to Rohtak, is around 180 kms (one side), which takes around 5:00-5:30 hours, thus, causing extreme hardships to the petitioner-wife as well as the minor children.
- vi) That the petitioner-wife is financially dependent on her widow mother and lacks convenient transportation options, thus, is compelled to rely on public transit, resulting in significant hardships.
- vii) That the petitioner-wife submits that she has to lookafter her physically handicapped brother, namely; Deepak Kumar also, and it is very difficult for her to attend the Court proceedings at Rohtak. To prove the factum of disability, counsel for the petitioner-wife produced in Court, the photocopy of the 'Disability Certificate' dated 30.09.2022, issued to Deepak Sharma (brother of the petitioner-wife), wherein, it has been recorded that he is a case of **Locomotor Disability**, and due to **Hip Disarticulation Right Side with Amputation of Left Leg below knee upto Lower 1/3rd**, he is suffering from 90% permanent disability in relation to his both legs. Photocopy of the 'Disability Certificate' dated 30.09.2022, is taken on record.

3. I have heard learned Counsel for the petitioner.

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.”

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

5. 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

TA-1434-2023

- 4 -

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.”

6. 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.

7. This court is of the opinion that, for the purpose of deciding the transfer petition, it is not necessary to issue notice to the respondent-husband. Otherwise, both the parties would be burdened with litigation costs and transportation expenses, which shall be taxing for both the sides.

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 with the following directions:

- (i) The petition filed by respondent - husband under Section 9 of Hindu Marriage Act, 1955, bearing No. DMC/710/2023 titled as "Rajan v. Tannu", pending in the Court of Ld. Principal Judge, Family Court, Rohtak is transferred to a Court of competent jurisdiction at Yamuna Nagar at Jagadhri.
- (ii) The Ld. District Judge, Rohtak is directed to transfer complete record pertaining to the aforesaid case to District Judge, Yamuna Nagar at Jagadhri, by directing both the sides to appear before the Court of Ld. District Judge, Yamuna Nagar at Jagadhri, on a particular date for further proceedings.
- (iii) The District Judge, Yamuna Nagar at Jagadhri will assign the said petition to the Court of competent jurisdiction.

9. The concerned Court at Yamuna Nagar at Jagadhri shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.

10. 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.

11. 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

TA-1434-2023

- 6 -

- (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 the Court proceedings at Rohtak, 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 Rohtak in case the respondent opts to contest this petition.

12. 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, Yamuna Nagar at Jagadhri, as per the direction of District Judge, Rohtak; 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