

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

Transfer Application No. 1548 of 2022

Date of decision:-23.03.2023

Anshul Singla

.....Petitioner

VS

Nikhil Mahajan

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sarthak Gupta, Advocate
for the petitioner.

Mr. Rishabh Gupta, Advocate
For the respondent.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act'), bearing No. DMC/1316/2022, titled "Nikhil Mahajan vs. Anshul Singla" pending in the Court of Principal Judge, Family Court, Bathinda to a Court of competent jurisdiction at Patiala.

2. Learned counsel for the petitioner has contended :-

- i) That the present petition is filed by the petitioner through her father Shri Gian Chand Singla, with whom she resides because she is in vegetative state and permanently disabled to the extent of 85%. The petitioner is unable to sign and speak and is of otherwise feeble mind on account of severe head injuries suffered by her in an accident, occurred on 06.7.2015. The Disability Certificate of the petitioner reflecting her disability as Diffuse Axonal

Injury Grade 3 and the extent of her permanent disability as 85% is annexed as Annexure P-1.

- ii) That the parties were married on 11.3.2012 according to Hindu rites and rituals.
 - ii) That a male child was born out of this wedlock, who is around 10 years of age and is in the care and custody of the respondent.
 - iii) That the petitioner-wife is living separately from the respondent-husband and living with her parents at their mercy at Patiala since 13.12.2015.
 - iv) That the petitioner, who herself is a qualified Doctor having passed MBBS and MD in Pathology but after the accident, she is bed ridden and is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband, who is also a Doctor and earning Rs.2,50,000/- per month as salary and Rs.100,000/-per month from coaching classes and also earning from an Ice-cream Parlour at Bathinda, is not paying anything to her towards maintenance.
 - v) That the proceedings arising out of petition under Section 125 Cr.P.C. filed by the petitioner-wife through her father, are pending in the Courts having competent jurisdiction at Patiala.
 - vi) That the distance between place of residence of the petitioner-wife i.e. Patiala and the place of proceedings under Section 9 of the Act, filed by the respondent-husband, pending before the Principal Judge, Family Court, Bathinda, is about 150 kilometers on one side.
 - vii) That because of her acute disability and old age of her father, she is not in a position to attend the Court proceedings at Bthinda.
3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

4. In response to the notice of motion issued, Mr. Rishabh Gupta, Advocate has put in appearance and filed Power of Attorney on behalf of respondent, the same is taken on record. Learned counsel for the respondent has controverted the prayer made in this petition regarding transfer of the petition filed by the respondent-husband on the ground that the child is residing with the respondent, who is taking care of him responsibly and in case the present petition is allowed, it will not only affect the mental position of the child rather the mental and physical position of the respondent too.

4. I have heard learned counsel for the parties.

5. In the present matter, because of the physical and mental state of the petitioner-wife due to the accident, regarding which Disability Certificate has also been annexed with the present petition, because of which the golden career of the petitioner, who was also a Doctor, has been ruined, the Court has sympathy with her on that part. As far as the point that the minor child is staying with the respondent-husband is concerned, in view of physical and mental disability of the petitioner and surrounding atmosphere, it should be responsibility of the respondent-husband to understand the things on humanitarian ground as well.

6. Besides the facts as noticed hereinabove, 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**, 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.”

7. Further reliance can be placed upon the judgments in **“Sumita Singh vs Kumar Sanjay”, 2002 SC 396** and **“Rajani Kishor Pardeshivs 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.”

8. 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.

9. In view of the facts mentioned above and 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 filed by respondent husband under Section 9 of Act, bearing No.DMC/1316/2022, titled as 'Nikhil Mahajan vs. Anshul Singla', pending in the Court of Principal Judge, Family Court, Bathinda is transferred to a Court of competent jurisdiction at Patiala.
- b) The Id. District Judge, Bathinda is directed to transfer complete record pertaining to the aforesaid case to District Judge, Patiala.
- c) The parties are directed to appear before the District & Sessions Judge, Patiala on 25.5.2023.
- d) The District Judge, Patiala will assign the said petition to the Court of competent jurisdiction.

10. The concerned Court at Patiala 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.

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

12. I am supported by the decisions rendered by a Co-ordinate Bench of this Court in **TA No. 1315/2022, Rohini Arora v Nitin Talwar; TA No. 1322 of 2022, Jaswinder Kaur v Gurvinderjeet Singh; and TA No. 1323 of 2022, Usha Rani v Karmajit Singh.**

Disposed of.

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

March 23, 2023
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	YES/NO
Whether Reportable	YES/NO