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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 05.12.2023

Kamaljit Kaur

. . . Applicant/Petitioner

Versus

Jatinder Pal Singh

. . . Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Sumit Dua, Advocate
for the applicant/petitioner.

SANJAY VASHISTH, J. (Oral)

1. Present transfer application has been filed by the applicant/petitioner – wife, under Section 24 of CPC, for seeking transfer of the proceedings of the petition under Section 13 of the Hindu Marriage Act, 1955 bearing No.HMA/2108/2022 titled as “Jatinder Pal Singh vs. Kamaljeet Kaur” which is decreed *ex parte* by the Court of Principal Judge, Family Court, Amritsar and application bearing No.CM/705/2023 for setting aside the said *ex parte* decree, filed by the applicant-wife is pending consideration before the same Court at Amritsar. Transfer has been sought from the Family Courts at Amritsar to any Court of competent jurisdiction at Jalandhar.

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

- i) That marriage of the applicant-petitioner/wife and respondent-husband took place on 01.12.2007, as per Sikh rites and ceremonies at Tangra near Beas, District Amritsar.
- ii) That out of the said wedlock, one female child namely Avneet Kaur now aged 12 years was born and is residing with the applicant-wife and studying in school at Jalandhar.
- iii) That applicant-petitioner/wife has lodged one petition under Section 125 Cr.P.C. for grant of maintenance which is pending

before learned JMIC, Jalandhar in which learned Court has ordered Rs.8,000/- interim maintenance to the petitioner-wife but till date, nothing is paid. Petitioner-wife has also filed execution petition for compliance of the interim order granted under Section 125 Cr.P.C. She has also lodged one complaint under Domestic Violence Act against the respondent and his mother which is also pending before learned Principal Judge, Family Court at Jalandhar.

- iv) That petitioner-wife is having no source of income and is completely dependent upon the mercy of her parents.
- v) That respondent has filed petition under Section 13 of the Hindu Marriage Act, 1955 bearing No.HMA/2108/2022 titled as “Jatinder Pal Singh vs. Kamaljeet Kaur” is decreed *ex parte* and application for setting aside the *ex parte* decree is pending consideration before the Court of Principal Judge, Family Court, Amritsar.
- vi) That petitioner-wife is residing with her parents at parental house and traveling from Jalandhar to Amritsar is a distance of 90 kilometres (one side), thus, causing extreme hardships to the applicant-petitioner/wife as well as minor child.
- vii) That the 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.

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

In the facts and circumstances similar to the present case, in paragraph Nos.9 and 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.”

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

6. 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, 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 between the parties including criminal cases, if any;
- (g) Accessibility of the location i.e. from where the wife resides to the court where the case is pending; and
- (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. This court is of the opinion that, for the purpose of deciding the present 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.

9. 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 the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 bearing No.HMA/2108/2022 titled as “Jatinder Pal Singh vs. Kamaljeet Kaur” along with *ex parte* decree passed by the Court of Principal Judge, Family Court, Amritsar and all other connected proceedings including the application for setting aside the *ex parte* proceedings; is transferred to the Court of competent jurisdiction at Jalandhar.
- (ii) The Id. District Judge, Amritsar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Jalandhar, by directing both the sides to appear before the Court of Id. District Judge, Jalandhar, on a particular date for further proceedings.
- (iii) The District Judge, Jalandhar will assign the said petition to the Court of competent jurisdiction.

10. The concerned Court at Jalandhar shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.

11. The Court, where the matter is to be assigned after transfer, will accommodate the parties to the *lis* with at least, one date in a calendar month.

12. However, liberty is granted to the respondent-husband to revive the present petition, if so advised, to contest the same, provided that:

- (i) The respondent-husband 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

- (ii) The respondent-husband will file an affidavit giving

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undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Amritsar, on each and every date of hearing.

AND

- (iii) The respondent-husband will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Amritsar in case the respondent opts to contest this petition.

OR

- (iv) 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

- (v) If the respondent-husband is suffering from any substantial physical or mental disability or ailment.

13. For compliance of the order passed by this Court, Registry is directed to transmit copies of this order forthwith to learned District Judge, Jalandhar and learned District Judge, Amritsar, through email(s) as well.

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

(SANJAY VASHISTH)
JUDGE

December 05, 2023

Lavisha

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*