

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

Sr. No.102

TA-93-2024

Date of Decision: 01.08.2024

SURINDER KAUR

....Applicant

Versus

GURCHARAN SINGH MULTANI

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Rahul Jaswal, Advocate
for the applicant.

Mr. Dhawal Bhandari, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the petition under Section 13 of the Hindu Marriage Act i.e. HMA/505/2022, titled '*Gurcharan Singh Multani Vs. Surinder Kaur*', filed at the instance of respondent-husband, pending in Family Court Chandigarh, to Family Court (Camp Court) Mukerian, District Hoshiarpur.

In pursuance of the notice issued, respondent has made appearance through counsel. Also, reply has already been filed.

Learned counsel for the parties heard.

It is submitted by learned counsel for the applicant that two sons were born from the wedlock of the parties to the lis, on 18.03.1994 and 19.07.1997 and both the children are residing abroad. Further, it is submitted that the respondent-husband is Constable in Chandigarh Police and he is having illicit relations with one Kamlesh Kumari wife of Ashok Kumar. Also, it is submitted that during the proceedings conducted before

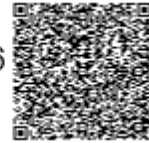


the Mediation and Conciliation Centre, the applicant came to know about the respondent to have married Kamlesh Kumari, without seeking divorce from the applicant.

Further also, it is submitted that the applicant has already filed petition under Section 125 Cr.P.C., which is pending in Family Court (Camp Court) Mukerian, District Hoshiarpur. After having come to know about performance of second marriage by the respondent, during the subsistence of the first marriage, the applicant has also filed the complaint for bigamy. However, learned counsel for the applicant, at present, is not having the copy of the complaint, so filed. As such, a prayer has been made for transfer of the case, from Family Court Chandigarh to Family Court (Camp Court) Mukerian.

On the other hand, learned counsel for the respondent submits that the applicant has already made appearance before the Courts at Chandigarh and he had made reference to the order dated 28.02.2024, copy whereof is annexed with the reply as Annexure R-1. Furthermore, it is submitted that the respondent is having age related cerebral and cerebellar atrophy and for this ailment, he is undergoing treatment as OPD patient in PGIMER, Chandigarh. In the given circumstances, it is submitted that rather, it shall be difficult for the respondent to pursue the divorce petition, if so transferred to Mukerian, as prayed by the applicant.

In view of the submissions aforesaid, beneficial reference is made to *N.C.V. Aishwarya vs. A.S.Saravana Karthik Sha, 2022 INSC 1310*, wherein, the Hon'ble Supreme Court made observations, with regard to the various conditions, ought to be taken into consideration, while dealing with the transfer of the legal proceedings, which are reproduced, as herein



given:-

“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 socio-economic 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.”

Also, reference is made to ***Sumita Singh vs. Kumar Sanjay and another, 2001(10) SCC 41***, and ***Rajani Kishor Pardeshi vs. Kishor Babular Pardeshi, 2005(12) SCC 237***, wherein, it has been observed that convenience of the wife is to be preferred and looked into.

It is well settled that while considering the transfer of the matrimonial dispute/case, the Court is to consider the family condition of the wife, custody of the children, economic condition of the wife, her physical health and the extent of her earning capacity, as well as earning capacity of the husband and most important, convenience of the wife, more particularly, considering the distance between the two places, where the litigation is already pending and is proposed to be now transferred and also about the connectivity of the place from her place of residence and bearing of the litigation charges and travelling expenses.

On query by the Court, it is submitted by learned counsel for



the respondent that the respondent is on medical leave, but however, he is undergoing medical treatment, as an OPD patient. In the given circumstances and also considering the distance of Chandigarh from Mukerian to be 215 kilometres, as stated in paragraph No.9 of the application, the convenience of the wife ought to be taken into consideration, more particularly, when there are allegations against the respondent, *vis-a-vis*, performance of second marriage.

Considering the submissions made by learned counsel for the applicant and the various circumstances, as spelt out from the application, the application, as such, is hereby accepted and the petition under Section 13 of the Hindu Marriage Act i.e. HMA/505/2022, titled ‘*Gurcharan Singh Multani Vs. Surinder Kaur*’, filed at the instance of respondent-husband, stands transferred from the Family Court Chandigarh, to Family Court (Camp Court), Mukerian, District Hoshiarpur. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court Chandigarh, to District and Sessions Judge, Hoshiarpur.

Learned District and Sessions Judge, Hoshiarpur, shall assign the said petition to the Family Court (Camp Court), Mukerian, District Hoshiarpur. Even, the parties are directed to appear before the Family Court, (Camp Court), Mukerian, District Hoshiarpur, within a period of one month from today onwards.

01.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No