

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

Sr. No.236

TA-112-2024

Date of Decision: 06.08.2024

SAROJ

....Applicant

Versus

NAVDEEP

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Ravinder Malik, Advocate
for the applicant.

None for the respondent.

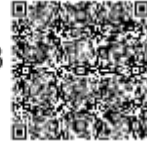
ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the divorce petition, filed at the instance of respondent-husband, pending in Family Court Jhajjar and she seeks transfer of the same to the Court of competent jurisdiction at Rohtak.

Despite service, the respondent did not make appearance in the present application. As such, he is proceeded against *ex parte*.

Learned counsel for the applicant-wife heard.

At the very outset, it is submitted by learned counsel that one son was born from the wedlock of the parties to the lis, is presently in the care and custody of the applicant. Also, it is submitted that the said son is suffering from 'Autism Spectrum Disorder' and his disability in relation to the brain is 70%. Even, the applicant is serving as Girl Cadet Instructor in 2

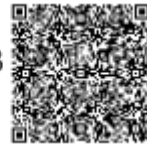


Har (Girls) BN NCC. Also, it is submitted that the applicant has already filed an application under Section 12 of the Protection of Women from Domestic Violence Act, which is pending in the Courts at Rohtak. The respondent had earlier filed the petition for seeking Restitution of Conjugal Rights in the Courts at Rohtak and the same was withdrawn by him, without any reason. Even though, now the respondent is a resident of Rohtak and his work place is also at Rohtak, still he had filed the divorce petition at Jhajjar, which is his home town.

In the given circumstances, it is submitted that it is difficult for the applicant to defend the divorce petition, filed at the instance of the respondent-husband, more particularly, while taking care of an autistic minor child, in her custody. As such, a prayer has been made for transfer of the case, pending at Family Court Jhajjar to the Court of competent jurisdiction at Rohtak.

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.

Taking into consideration the aforesaid case law, as well as submissions made by learned counsel for the applicant, the application, as such, is hereby accepted and the divorce petition, copy whereof is Annexure P-6, filed at the instance of respondent-husband, stands transferred from the Family Court Jhajjar, to the Court of competent jurisdiction at Rohtak. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court Jhajjar, to District and Sessions Judge, Rohtak.



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

06.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No