



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

Sr. No.110

TA-145-2024

Date of Decision: 14.08.2024

SHAILEY AGGARWAL

....Applicant

Versus

MANOJ KUMAR

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. S.S. Virk, Advocate
for the applicant.

Mr. Harsh Aggarwal, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the divorce petition i.e. DMC/1401/2023, titled '*Manoj Kumar Vs. Shailey Aggarwal*', filed at the instance of respondent-husband, pending in Family Court Patiala, to the Court of competent jurisdiction at Panipat.

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

Learned counsel for the parties heard.

At the very outset, learned counsel for the applicant has submitted that the applicant has filed the petition under Section 9 of the Hindu Marriage Act, which is pending in Family Court Panipat. Even, the distance between Patiala and Panipat is 172 kilometres. In the given circumstances, it is difficult for the applicant to defend the divorce petition, filed at the instance of the respondent-husband at Patiala, which is far away from the place of her residence. As such, a prayer has been made for transfer



of the divorce petition, pending at Family Court Patiala, to the Court of competent jurisdiction at Panipat.

On the other hand, while making reference to the contents of the reply, learned counsel for the respondent submits that the applicant was earlier married twice and she had obtained divorce, but however, at the time of matrimonial alliance with the respondent, she had disclosed only about one divorce. In fact, she is also infertile, which fact was also concealed by her. In the given circumstances, looking at the conduct of the applicant, the counsel for the respondent has made a prayer for dismissal of the transfer application.

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.

Adverting to the case in hand, it is pertinent to mention that there is no child born from the wedlock of the parties to the lis. The applicant is residing at Panipat, which is at a distance of about 172 kilometres, from Patiala, where the divorce petition is pending. Even though, the counsel for the respondent has made a reference to the divorce of the applicant, having effected twice, before performance of third marriage with the respondent and that she had not disclosed about the divorce having effected twice and she had informed only about one divorce, but the impact of the same can be adjudicated by the Court concerned, at the time of dealing with the litigation, qua this matrimonial dispute.

Keeping in view the distance of Patiala from Panipat, where the



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divorce petition is pending and also keeping in view the pendency of petition under Section 9 of the Hindu Marriage Act in the Courts at Panipat, the present application is hereby accepted and the divorce petition i.e. DMC/1401/2023, titled '*Manoj Kumar Vs. Shailey Aggarwal*', filed at the instance of respondent-husband, stands transferred from the Family Court Patiala, to the Court of competent jurisdiction at Panipat. The requisite record of the aforesaid case be sent by the Family Court Patiala, to District and Sessions Judge, Panipat.

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

14.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes/No