

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

TA-172-2024 (O&M)
Date of decision: 09.02.2024

Nidhi Manocha

...Petitioner

Versus

Amit Manocha

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Lovish Rattan, Advocate for the petitioner.

VIKAS SURI, J. (Oral)

1. Prayer in this petition is for transfer of the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') titled as *Amit Manocha vs. Nidhi Manocha*, pending in the Court of learned Additional Principal Judge, Family Court, Jalandhar to a Court of competent jurisdiction at Amritsar.

2. Learned counsel for the petitioner submits :-

- i) That the parties were married on 12.10.2011 according to Hindu rites and ceremonies.
- ii) That a male child, namely Vaishnav was born out of this wedlock on 01.11.2012, who is in the care and custody of the petitioner and studying in 5th class at Springdale Senior School, Amritsar. The respondent has failed to maintain the petitioner and their child.
- iii) That the petitioner-wife is residing with her in-laws i.e. the parents of the respondent-husband, who have disinherited him in the year 2022.

- iv) That the petitioner is unemployed, having no source of income and totally dependent upon her in-laws.
- v) That the distance between Jalandhar to Amritsar, is about 90-100 kilometers. It will be very difficult for the petitioner to defend the petition for divorce at Jalandhar. The in-laws of the petitioner are of old age and are unable to accompany the petitioner as such and there is no other male member to accompany the petitioner to Jalandhar for attending the Court/proceedings.
- vi) That the respondent is working as a commission agent and many other cases pending are against him and in one of such cases, the petitioner has been declared as proclaimed person vide order dated 02.01.2023 (Annexure P-3). It is submitted that as the respondent is absconding, he would not be appearing before the Family Court at Jalandhar and the petitioner would be unnecessarily harassed.

3. It is *inter alia* on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

4. I have heard learned counsel for the petitioner.

5. 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 SCC Online SC 1199, 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.”

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

7. 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.

8. After going through the entire paper-book, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner-wife will have to bear the litigation expenses and transportation expenses and in case, notice of motion is issued, even the respondent-husband has to bear the litigation expenses and in view of 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 13 of Act, titled as *Amit Manocha vs. Nidh Manocha*, pending in the Court of learned Additional Principal Judge, Family Court, Jalandhar is transferred to a Court of competent jurisdiction at Amritsar.
- b) The learned District Judge, Jalandhar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Amritsar.
- c) The parties are directed to appear before the District & Sessions Judge, Amritsar on 21.03.2024.
- d) The District Judge, Amritsar will assign the said petition to the Court of competent jurisdiction.

9. The concerned Court at Amritsar 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.

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

11. However, liberty is granted to the respondent to revive this petition, if he intends to contest the same, provided that:-

- (a) The respondent will clear all arrears of maintenance amount, if any, in terms of any 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.
- (b) The respondent will file an affidavit giving undertaking to pay Rs.1,000/-, on each and every date of hearing to the petitioner for attending the Court proceedings at District Courts, Amritsar.
- (c) The respondent will bring a demand draft of Rs.25,000/-, drawn in favour of petitioner, towards the litigation expenses to pursue the case at District Amritsar in case the respondent opts to contest this petition.

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; and TA-610-2023, Hemal v Manuvrat.**

13. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in

these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Amritsar on 21.03.2024, it is directed that a copy of this order be sent to the respondent through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioner through her counsel is directed to ensure her appearance accordingly.

- 12. Disposed of.
- 13. Pending applications, if any, stand disposed of.

February 09, 2023
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(VIKAS SURI)
JUDGE

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