



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.103

TA-179-2024

Date of Decision: 28.08.2024

DILPREET KAUR

....Applicant

Versus

DILPREET SINGH

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Rakeshinder Singh, Advocate
for the applicant.

Mr. Prince Goyal, Advocate
for the respondent.

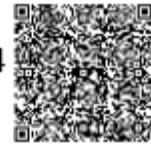
ARCHANA PURI, J. (Oral)

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/2934/2023, titled '*Dilpreet Singh Vs. Dilpreet Kaur*', filed at the instance of respondent-husband, pending in Family Court Ludhiana, to the Court of competent jurisdiction at Patiala.

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, it is submitted by the counsel for the applicant that on account of matrimonial discord, the parties are residing separate. Two male children born from the wedlock of the parties, who are aged 18 years and 12 years, are presently in the care and custody of the applicant. However, the applicant has also filed petition under Sections 12(1), 17, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic



Violence Act, which is pending in the Courts at Patiala. Also, it is submitted that after filing of the transfer application, the applicant has also filed petition under Section 9 of the Hindu Marriage Act, which is also pending in the Courts at Patiala. In the given circumstances, it is submitted that it is difficult for the applicant to defend the divorce petition, at a distance of about 90-100 kilometres, from the place of her residence. Learned counsel while making reference to various case law, as reproduced in the application, has also submitted that the 'convenience' of the wife, ought to be taken into consideration by the Courts, while considering the transfer application. As such, a prayer has been made for acceptance of the transfer application.

On the contrary, the counsel for the respondent, while making reference to the reply filed, has submitted that the respondent is suffering from 56% permanent disability, in relation to his left hemiparesis and because of this medical ailment, he is unable to move freely, all the time and requires assistance of at least one person. Moreover, it is submitted that the respondent is taking care of the children, who were abandoned by the applicant. As such, the counsel for the respondent makes a prayer for dismissal of the transfer application.

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.

No doubt, as submitted by the counsel for the applicant that in the matrimonial dispute, while considering the transfer proceedings, the convenience of the wife, ought to be taken into consideration, but however, the same is not a thumb rule. The various other circumstances spelt out, ought to be taken into consideration, as well.

In the case in hand, in view of the submissions made by the counsel for the respondent, both the children, born from the wedlock of the parties to the lis, are residing with the respondent. Even, the respondent is suffering from hemiparesis and as per the disability certificate, which is annexed with the reply as Annexure R-1, the respondent is a case of locomotor disability and diagnosis in his case is '*left hemiparesis MRS 56*'. He is having 56% permanent disability. Definitely, on account of this ailment, there ought not to be free movement of the applicant all the time. He must be having assisted living.

Considering the aforesaid fact situation and doing balance between the parties to the lis, the difficulty weighs in favour of the respondent to pursue the litigation. Hence, the present application is hereby dismissed.

28.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No