



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

Sr. No.106

TA-263-2023

Date of Decision: 13.08.2024

ROZY

....Applicant

Versus

SANDEEP KUMAR

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Sandeep Arora, Advocate
for the applicant.

Mr. Vivek Aggarwal, 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/2180/2022, titled '*Sandeep Kumar Vs. Rozy*', filed at the instance of respondent-husband, pending in the Family Court Amritsar, to the Court of competent jurisdiction at Jalandhar.

In pursuance of the notice issued, respondent has made appearance through counsel. Though, learned counsel for the respondent does not intend to file reply to the present transfer application, but however, he submits that he contests the same.

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel that the marriage between the parties took place on 01.05.2022, but no child was born from their wedlock. However, it is submitted that it was the second marriage of both the applicant, as well as the respondent. The applicant is



having one son from her previous marriage, whereas, the respondent is having one daughter from his previous marriage. Now, both the children are residing with the respective parents. It is submitted that while taking care of the minor son, it is difficult for the applicant-wife, to defend the divorce petition, at a distance of about 80 kilometres, from the place of her residence. As such, a prayer has been made for transfer of the case, pending at Family Court Amritsar, to the Court of competent jurisdiction at Jalandhar.

On the contrary, learned counsel for the respondent-husband has pointed out that the daughter born from the previous marriage of the respondent, is aged 10 years and is in his care and custody. In the given circumstances, it will be difficult for the respondent to travel to Jalandhar, to pursue the divorce petition, if so transferred. As such, a prayer has been made for dismissal of the transfer application.

In view of the submissions made 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 facts of the present case, even though, both the applicant and respondent are having one child each, from their previous marriage, but both the said children are of almost similar age. No doubt, as submitted by the counsel for the respondent that he is taking care of the daughter, who is aged 10 years and as such, has an onerous duty to look after her interest.

However, on query by the Court, it is submitted by the counsel for the respondent that the parents of the respondent are residing with him.



In the given circumstances, the child can very well be taken care of by her paternal grand-parents.

Looking at the distance, at which the applicant is required to commute to defend the divorce petition and also considering the submissions made by learned counsel for the applicant and the various circumstances, as spelt out, the present application is hereby accepted and the petition under Section 13 of the Hindu Marriage Act i.e. HMA/2180/2022, titled '*Sandeep Kumar Vs. Rozy*', filed at the instance of respondent-husband, stands transferred from the Family Court Amritsar, to the Court of competent jurisdiction at Jalandhar. The requisite record of the aforesaid case be sent by the Family Court Amritsar, to District and Sessions Judge, Jalandhar.

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

13.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No