



TA-291-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.205

TA-291-2023
Date of Decision: 09.08.2024

MAMTA

....Applicant

Versus

SHUBAM VERMA @ SHAMMI

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. N.K.Manchanda, Advocate
for the applicant.

Mr. Navneet Jindal, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant wife has filed the present transfer application for seeking transfer of the petition i.e. HMA-969-2022 titled “*Shubam Verma @ Shammi v/s Mamta*” under Section 12 (2) (a) (ii) of Hindu Marriage Act, 1955, filed at the instance of respondent/husband, from Family Court, Chandigarh to the court of competent jurisdiction at Ferozepur.

In pursuance of notice issued, respondent has made appearance through counsel.

Learned counsel for the parties heard.

At the very outset, learned counsel for the applicant has submitted that it was the second marriage of the applicant with the respondent and no child was born from the wedlock of the parties to the lis. However, on account of matrimonial discord, they are residing separate.

Learned counsel further submits that the applicant has filed one complaint



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under Section 12 of Protection of Women from Domestic Violence Act, 2005, against the respondent, as a counterblast to the same petition under Section 12 of Hindu Marriage Act, has been filed by the respondent.

In the given circumstances, it is submitted that it is difficult for the applicant to defend the said petition from a distance of about 230 kms from the place of her residence.

On the other hand, learned counsel for the respondent submits that the marriage had never taken place with the consent of the respondent and therefore, he had challenged the same on the ground of nullity, on account of lack of consent. It is further submitted that the respondent had met the applicant, with regard to the his visa formality to be completed, with regard to his going abroad only.

Learned counsel for the respondent also submitted that the respondent is having disability to the extent of 65% of hearing. Along with the reply photostat copy of one certificate issued by the Hospital Authorities, has been attached. However, perusal of the same reveals that it mentions about 65% hearing loss and further nothing, as such, has been mentioned in the said Certificate, with regard to the hearing loss from both ears or one ear only. Nothing, as such, has been mentioned about the impact of the same. On this account, it cannot be held, at this stage, about the disability to be having any disadvantage to the applicant, to such an extent that it becomes difficult for him to pursue the petition, filed at his instance, if so transferred.

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.



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Considering the submissions made by learned counsel for the applicant and various circumstances, as spelt out, the application, as such, is hereby accepted and the petition under Section 12 (2) (a) (ii) of the Hindu Marriage Act i.e. HMA-969-2022 titled “*Shubam Verma @ Shammi v/s Mamta*”, filed at the instance of respondent-husband, stands transferred from the Family Court, Chandigarh to the Court of competent jurisdiction at Ferozepur. The requisite record of the aforesaid divorce petition be send by the Family Court, Chandigarh to District and Sessions Judge, Ferozepur.

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

09.08.2024
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(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No