



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

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TA-346-2024 (O&M)
Date of decision: 16.05.2024

Aisha Julka

...Petitioner

Versus

Nafees

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Sunil Mallan, Advocate for the petitioner.

Mr. Abhishek Khullar, Advocate for the respondent.

VIKAS SURI, J.

1. This application under Section 24 of the Code of Civil Procedure, 1908, has been filed by the petitioner-wife, seeking transfer of the civil suit for mandatory injunction, filed by respondent-husband, registered as CS/155/2023 and the accompanying application under Order 39 Rules 1 and 2 CPC, pending before learned Principal Judge, Family Court, Ludhiana to a Court of competent jurisdiction at Kharar, District SAS Nagar (Mohali).

2. At the preliminary hearing itself, before notice could be issued, the respondent entered appearance through counsel; and on the joint request of learned counsel for the parties, the matter was referred to the Mediation and Conciliation Centre of this Court. As per report of the learned Mediator, despite best efforts, parties could not reach at any amicable settlement and the matter was sent back as unsettled. Hence,



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the main case is taken up for disposal on merits. The transfer application has been opposed by learned counsel for the respondent.

3. The facts of the case emanating from the record are that the marriage between the parties was solemnized by way of nikah on 05.03.2020 at Kurali, District SAS Nagar (Mohali). The parties cohabited as husband and wife at Ludhiana and out of the said wedlock, one male child, namely Shayan Malik, was born on 11.03.2022. The minor is under the care and custody of the petitioner. It is alleged that matrimonial discord arose between the parties and the petitioner learnt that the respondent-husband is trying to get married again (second marriage) without the consent/permission of the first wife i.e. the petitioner. The parties have been living separately since 26.04.2023. The petitioner is residing at her paternal home at Kurali, District SAS Nagar. The petitioner has no independent source of income and is fully dependent upon her parents, who themselves are of mature age and do not keep good health. The petitioner has also filed a petition under Section 125 Cr.P.C. for grant of maintenance, registered as MNT125/72/2023, which is pending before the learned Addl. Principal Judge, Family Court, SAS Nagar, Camp at Kharar. The respondent-husband is not supporting the petitioner and the above captioned civil suit has only been filed to harass and pressurize her. The distance between the residence of the petitioner and the Courts at Ludhiana is about 80 Kms and it takes about 5 hours to commute to and fro. It is very difficult for the petitioner to undertake the said journey to appear before



the Family Court at Ludhiana along with her minor child, on each and every date of hearing.

4. Heard learned counsel for the parties and have perused the material available on record.

5. Besides the facts noticed hereinabove, the legal position in such like cases as the present one, is well established. In this regard, reference to judgment of the Hon'ble Supreme Court rendered in *N.C.V.*

Aishwarya v. A.S. Saravana Karthik Sha, AIR 2022 SC 4318, would be apposite, wherein the Apex 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. In the light of the conspectus of the law laid down by the Apex Court, this Court is of the view that while adjudicating a transfer petition initiated by the wife in the context of a matrimonial dispute, the Court must take into account a comprehensive array of the following factors:-

- (a) Economic condition and earning capacity of the parties, i.e. husband and wife;
- (b) Social standing of the wife and her dependency;
- (c) Custody of children;
- (d) Educational needs of the children, if any;
- (e) Physical well-being of the parties concerned;
- (f) Pending litigation(s) between the parties including criminal cases, if any;
- (g) Accessibility from the location where the wife resides to the Court where the case is pending;
- (h) Availability of convenient commuting options, its



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periodicity and the travel time.

Undoubtedly, only a harmonious consideration of all the above vital aspects would ensure a just and equitable decision in such cases.

8. Thus, applying the principles of law laid down by the Apex Court in *N.C.V Aishwarya's case* (supra), *Sumita Singh's case* (supra) and *Rajani Kishor's case* (supra), this Court deems it appropriate to allow the present petition, by issuing the following directions:-

- (i) The civil suit filed by the respondent-husband, registered as CS/155/2023, pending before the learned Principal Judge, Family Court, Ludhiana, is transferred to a Court of competent jurisdiction at Kharar, District SAS Nagar.
- (ii) The learned District Judge, Ludhiana, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, SAS Nagar.
- (iii) The parties through their counsel are directed to appear before the learned District Judge, SAS Nagar, on **30.05.2024**.
- (iv) The learned District Judge, SAS Nagar, will assign the said petition to the Court of competent jurisdiction.

9. I am supported by the decisions rendered by a co-ordinate Bench of this Court in TA No. 1315/2022, titled as *Rohini Arora vs. Nitin Talwar*; and TA No. 1322 of 2022, titled as *Jaswinder Kaur vs. Gurvinderjeet Singh*. Even this Court has followed the aforesaid principle of law in TA-610-2023, titled as *Hemal vs. Manuvrat*; and TA-406-2024, titled as *Meena Rani vs. Surinder Pal Dass*.



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10. The present petition is disposed of accordingly. Pending applications, if any, also stand disposed of.
11. Copy of this order be sent to both the learned District Judges concerned, for information and necessary compliance.

May 16, 2024
sumit.k

(VIKAS SURI)
JUDGE

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