

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.229

TA-347-2024

Date of Decision: 04.09.2024

NEHA SHARMA AND OTHERS

....Applicants

Versus

MAHENDER PAL HARIT

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Ms. Pallavi Babbar, Advocate
for the applicants.

Mr. Lajpat Rai Sharma, Advocate
for the respondent.

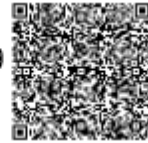
ARCHANA PURI, J. (Oral)

The present application has been filed by the applicant No.1- Neha Sharma (daughter-in-law of the respondent) and her parents, thereby seeking transfer of the civil suit i.e. CS/121/2024 titled '*Mahender Pal Harit Vs. Neha*', filed by the respondent, pending in the Courts at Kaithal and they seek transfer of the same to the Court of competent jurisdiction at Karnal.

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 applicants that applicant No.1 was married with Vivek Harit, son of the respondent. However, matrimonial dispute arose between them, as a result whereof, various rounds of litigation started. On account of this matrimonial discord, the applicant has filed the petition under Section 125 Cr.P.C., as

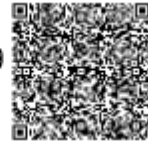


well as petition under Section 12 of the Protection of Women from Domestic Violence Act, which are pending in the Courts at Karnal. Even, the applicant has got lodged an FIR bearing No.860 dated 14.10.2023, under Sections 323, 406 and 498-A IPC at Police Station Karnal City, and qua the same, challan has been presented and trial is pending in the Courts at Karnal.

Also, it is submitted by the counsel for the applicant that the son born from the wedlock of the parties, is in the care and custody of the applicant. She is having no independent source of income and totally dependent upon her parental family. Hence, a prayer has been made for transfer of the civil suit from Kaithal to Karnal, more particularly, while taking into consideration the minor child, living in the care and custody of applicant No.1.

On the contrary, the counsel for the respondent, while making reference to the contents of the reply, has submitted that the applicant was not taking care of the minor child, while she was living in the matrimonial house. Also, he has made reference to one incident, when the applicant No.1 along with her husband, had gone for a trip to Mussoorie, leaving behind the minor child with the grand-parents. Furthermore, it is submitted that the respondent is a senior citizen and considering the same, he makes a prayer for dismissal of the application.

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.

Adverting to the case in hand, it is pertinent to mention that the child born from the wedlock of the parties to the lis, is in the care and



custody of the applicant. Three other litigation is going on between the parties, on account of matrimonial dispute of applicant No.1 with her husband, mention whereof, has been made in the submissions made by the counsel for the applicants, noted as aforesaid.

Considering the same, definitely, inconvenience shall be caused to the applicants, to defend the civil suit, filed by her father-in-law, more particularly, while she is taking care of the minor child. Even though, reference is made to the bad conduct of the applicant, in not taking care of the minor child, while living in the matrimonial house, but however, such assertions, can be looked into, in the appropriate round of litigation. Considering the aforesaid, the application is hereby accepted and the civil suit i.e. CS/121/2024 titled '*Mahender Pal Harit Vs. Neha*', filed by the respondent, stands transferred from Family Court Kaithal, to the Court of competent jurisdiction at Karnal. The requisite record of the aforesaid case be sent by Family Court Kaithal, to the District and Sessions Judge, Karnal.

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

04.09.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No