

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

Sr. No.106

**TA-382-2023 (O&M)
Date of Decision: 30.07.2024**

NAJEERA

....Applicant

Versus

BIRBAL KHAN

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. K.S. Brar, Advocate
for the applicant.

Mr. Achin Gupta and Mr. Karan Bansal, Advocates
for the respondent.

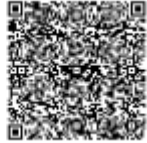
ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the suit for Restitution of Conjugal Rights i.e. CS-29-2022 dated 04.10.2022, titled '*Birbal Khan Vs. Najeera*', filed at the instance of respondent-husband, which is pending in the Family Court Bathinda, to the Court of competent jurisdiction at Mansa.

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

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the applicant that FIR bearing No.6 dated 10.01.2023, under Sections 406 and 498-A IPC, got lodged at the instance of the applicant at Police Station Sadar, District Mansa, is already pending in the Courts at Mansa. In the given circumstances, it is difficult for the applicant to pursue the suit for Restitution of Conjugal Rights, filed at the instance of the respondent-



TA-382-2023 (O&M)

husband at Bathinda, which is at a distance of 60 kilometers from the place of her residence. As such, a prayer has been made for transfer of the case, pending at Family Court, Bathinda to the Court of competent jurisdiction at Mansa.

On the other hand, learned counsel for the respondent submits that the minor child, born from the wedlock of the parties to the lis, is blind from one eye and is having 60% eyesight in another eye. Thus, it is difficult for the respondent to pursue the suit for Restitution of Conjugal Rights, if transferred to the Mansa Courts.

On query by the Court, it is disclosed by learned counsel for the respondent that in the family of the respondent, besides the respondent, his parents and his brother are also living together.

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.

Considering the submissions made by learned counsel for the applicant and the various circumstances, as spelt out from the application, the application, as such, is hereby accepted and the suit for Restitution of Conjugal Rights i.e. CS-29-2022 dated 04.10.2022, titled '*Birbal Khan Vs. Najeera*', filed at the instance of respondent-husband, stands transferred from the Family Court, Bathinda to the Court of competent jurisdiction at Mansa. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court, Bathinda to District and Sessions Judge, Mansa.



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

30.07.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No