

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

TA-394-2023
Date of Decision: 22.03.2024

SURINDER KAUR
....Petitioner

VERSUS

AVTAR SINGH
....Respondent

CORAM: HON’BLE MR. JUSTICE VIKAS SURI

Present: Mr. Brijesh Kumar, Advocate
for the petitioner.

Mr. Jagjit Singh, Advocate for
Mr. N.S. Dadwal, Advocate
for the respondent.

VIKAS SURI, J. (Oral)

1. Prayer in the present petition is for transfer of the petition filed by the respondent-husband under Section 9 of the Hind Marriage Act, 1955 bearing case No.HMA/345/2022 titled as *Avtar Singh vs. Surinder Kaur*, pending before the Additional Principal Judge, Family Court, Jagraon to a Court of competent jurisdiction at Nawanshahr.
2. Upon notice having been issued, learned counsel for respondent-husband had submitted that the respondent was in judicial custody at Central Jail, Ludhiana and as such he had sought time to seek fresh instructions. On 20.12.2023, following order was passed;-

“Counsel appearing for the respondent submits that after the filing of petition under Section 9 of the Hindu

Marriage Act, 1955, the respondent-husband was confined in Jail in some NDPS case, some where in May-June, 2023.

He prays for some time to seek necessary instructions, as to whether any purpose would be achieved by keeping the petition under Section 9 of the Hindu Marriage Act, 1955, pending in the Court of Ld. Addl. Principal Judge, Family Court, Jagraon, or not, as the respondent husband is in jail.

Adjourned to 18.03.2024.

Interim order to continue.”

3. On resumed hearing today, learned counsel for the respondent states that he has no instructions from the respondent and the respondent is still incarcerated. In the light of above, he pleads no instructions.

4. Heard learned counsel for the parties and perused the record with their able assistance.

5. It is not disputed that after institution of the petition under Section 9 of the Hindu Marriage Act, 1955, the respondent-husband was taken into police custody and since then, is behind bars. In such a situation, to maintain a petition at the hands of the respondent-husband under Section 9 of the Act (*supra*), would be abuse of judicial process and in the aforesaid circumstances calling upon the petitioner-wife to contest such petition would be a travesty of justice.

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 judgment of the Hon’ble Supreme Court rendered in ***N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha*, 2022 SCC Online SC 1199**, the Apex Court held as thus:-

“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 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.”

8. Even this Court in number of cases has followed the aforesaid principle of law. Accordingly, it is well settled that while considering the transfer of a matrimonial dispute/case, at the instance of the wife, the Court is to consider the family condition of the wife, the custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important the convenience of the wife i.e. she cannot travel alone without assistance of a male member of her family, connectivity of the place to and fro from

her place of residence as well as bearing of the litigation charges and travelling expenses.

9. After going through the entire paper-book, in view of the judgments in *Sumita Singh's* case (supra), *Rajani Kishor Pardeshi's* case (supra) and *N.C.V. Aishwarya's* case (supra) passed by the Hon'ble Supreme Court, this Court deems it appropriate to allow the present petition. Keeping in view the convenience of the wife, present petition deserves to be accepted. Accordingly, the present petition is allowed with the following directions:-

- a) The petition filed by respondent-husband under Section 9 of the Act, 1955, titled as *Avtar Singh vs. Surinder Kaur*, pending in the Court of Principle Judge, Family Court, Jagraon is transferred to a Court of competent jurisdiction at Nawanshahr.
- b) The District Judge, Ludhiana is directed to transfer complete record pertaining to the aforesaid case to District Judge, Nawanshahr.
- c) The parties through their counsel are directed to appear before the District Judge, Nawanshahr on 30.05.2024.
- d) The District Judge, Nawanshahr will assign the said petition to the Court of competent jurisdiction at Nawanshahr.

10. The concerned Court at Nawanshahr will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.

11. Accordingly, the present petition is disposed of directing the parties to appear before the District Judge, Nawanshahr on 30.05.2024.

Copy of this order be sent to both the Courts for information and necessary compliance.

12. Pending applications, if any, also stand disposed of.

March 22, 2024

Sangeeta

(VIKAS SURI)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No