



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211 TA-451-2024 (O&M)
Date of decision: 30.05.2024

Arti Rani
Versus
Pawan Kumar
...Petitioner
...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI
Present: Mr. Gurnoor Singh Sethi, Advocate, Legal Aid Counsel
for the petitioner.

VIKAS SURI, J.

1. Prayer in this application under Section 24 of the Code of Civil Procedure, 1908, filed by petitioner-wife is for transfer of the petition under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act'), filed by respondent-husband, registered as HMA/532/2023, pending before learned Addl. Principal Judge, Family Court, Faridkot, to a Court of competent jurisdiction at Fazilka.
2. Learned counsel for the petitioner submits:-
 - i) That the parties were married on 26.06.2012 according to Hindu rites and ceremonies and from the said wedlock, one male child was born, who is in the custody of the petitioner.
 - ii) That the petitioner-wife along with her son is living separately from the respondent-husband. They are residing with the petitioner's parents at Fazilka.
 - iii) That the petitioner-wife has filed a petition under Section 125 Cr.P.C. for grant of maintenance and a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which are pending in the Courts at Fazilka.



- iv) That the distance between Faridkot and Fazilka is about 100 kilometers and it is very difficult for the petitioner to attend the proceedings on each and every date of hearing.

3. In the present case, notice of motion for final disposal was issued vide order dated 10.04.2024 for 30.05.2024. As per office report, notice issued to the respondent has been received back served through his father. Despite service, there is no representation on behalf of the respondent nor any reply has been filed. It is apparent that the respondent-husband is not serious to contest the present proceedings. Accordingly, this petition is being disposed of in his absence.

4. Heard learned counsel for the petitioner and have gone through the material placed on record before this Court.

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 and its periodicity.

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

8. As already noticed above, despite service and opportunity, the respondent-husband has chosen, not to appear in the present proceedings. Without commenting on the said issue, this Court deems it appropriate to proceed with the prayer of the present applicant-petitioner.

9. 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) Petition under Section 9 of the Act, filed by the respondent-husband, registered as HMA/532/2023, pending before learned Addl. Principal Judge, Family Court, Faridkot, is transferred to a Court of competent jurisdiction at Fazilka.



TA-451-2024

-5-

- (ii) The learned District Judge, Faridkot, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Fazilka.
- (iii) The parties through their counsel are directed to appear before the learned District Judge, Fazilka, on **09.07.2024**.
- (iv) The learned District Judge, Fazilka, will assign the said petition to the Court of competent jurisdiction.
- (v) The concerned Court at Fazilka, shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.

10. 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*.

11. The present petition is disposed of accordingly. Pending applications, if any, also stand disposed of.

12. Copy of this order be sent to both the learned District Judges concerned, for information and necessary compliance.

May 30, 2024
sumit.k

(VIKAS SURI)
JUDGE

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