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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.214

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Date of Decision: 02.09.2024

RAVINDER KAUR

....Applicant

Versus

HARMOHAN SINGH

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Hardik Ahluwalia, Advocate
for the applicant.

Mr. Shantanu Bansal, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the divorce petition i.e. HMA/662/2020, titled '*Harmohan Singh v/s Ravinder Kaur*', filed at the instance of respondent-husband, pending in Family Court Ambala, to the Court of competent jurisdiction at Fatehgarh Sahib.

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, learned counsel for the applicant has submitted that the marriage between the parties had taken place on 21.03.2007. However, due to the matrimonial discord, they are residing separate since 2020. Earlier also, in the year 2015, the applicant had filed



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an application before Senior Superintendent of Police, Fatehgarh Sahib on 06.08.2015 and the same was marked to Police Station, Women Cell. In pursuance of the same, compromise has been effected between the parties, but however, the respondent resiled lateron. On this account, another application was filed in March-April, 2020. Therein also, after the mediation and conciliation, compromise was effected, but again it did not works upon and now the respondent had filed petition under Section 13 of Hindu Marriage Act, which is pending in the courts at Ambala. It is also submitted that the respondent is having illicit relation with another woman.

In the given circumstances, it is submitted that it is difficult for the applicant to defend the divorce petition, from a distance of about 60 kilometres, from her place of residence. More particularly, while she is having no independent source of earning and is solely dependent upon the menial income of her brother.

On the other hand, learned counsel for the respondent while making reference to the contents of the reply, has submitted that the respondent was widower from his first marriage and this was his second marriage with the applicant and one son was born from this wedlock of parties to the lis, who is presently in the care and custody of the respondent.

In fact, it is submitted that false allegations have been leveled against the respondent about, having illicit relationship. Looking at this conduct, he submits that the transfer application be dismissed, more particularly, when the applicant had not made attempt for amicable settlement, after she went away from the matrimonial home.



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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



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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 here that the parties are residing separate. Even though, the applicant had not mentioned about the birth of child from this wedlock, in the application, but however, it was so stated by learned counsel for the respondent, in the reply. The child is in the care and custody of the respondent. Though, allegations and counter allegations are there, with regard to the cruelty having extended at the instance of the applicant, as well as respondent, but the aspect of cruelty, shall be dealt by the court concerned while adjudicating on the divorce petition.

From the application, as well as reply, it is evident that the applicant is not having any source of earning and she is solely dependent upon the earnings of her brother. In the given circumstances, she is required to travel the distance of about 60 kms, to defend the divorce petition.

On query by the court, it is disclosed by learned counsel for the respondent that apart from the respondent, his parents are residing with him along with the child, born from the wedlock of the parties to the lis.

Considering the aforesaid fact situation, and also considering the distance, from which the applicant is to defend the divorce petition, the present application is hereby accepted and the petition under Section 13 (1) of the Hindu Marriage Act i.e. HMA/662/2020, titled *'Harmohan Singh v/s*



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Ravinder Kaur’, filed at the instance of respondent-husband, stands transferred from Family Court, Ambala, to the Court of competent jurisdiction at Fatehgarh Sahib. The requisite record of the aforesaid case be sent by Family Court Ambala, to the District and Sessions Judge, Fatehgarh Sahib.

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

02.09.2024

Sonu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No