

TA-574-2024

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

Sr. No.122

TA-574-2024

Date of Decision: 24.10.2024

NEHA LOHAT

....Applicant

Versus

AMAN KUMAR

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Nitish Pathak, Advocate
for the applicant.

Ms. Usha Rani, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the petition under Section 13-A of the Hindu Marriage Act, titled '*Aman Kumar Vs. Neha Lohat*' (Annexure P-1), filed by the respondent-husband, pending in the Family Court, Kurukshetra and she seeks transfer of the same to the Court of competent jurisdiction at Ambala.

In pursuance of the notice issued, respondent 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 applicant that the marriage between the parties to the lis, had taken place on 30.04.2021. One son born from the said wedlock, who is about 2 years old, is in the care and custody of the applicant. On account of the matrimonial discord, the applicant had filed the petition under Section 9 of the Hindu Marriage Act, which is pending in the Courts at Ambala and therein, the

respondent has already made appearance. Even, the applicant has filed the petition under Section 125 Cr.P.C., which is also pending in the Courts at Ambala, is at the appearance stage. Also, it is submitted that the applicant is not having any source of earning and is totally dependent upon her parental family. In the given circumstances, it is submitted that it is difficult for the applicant to defend the divorce petition, pending at Kurukshetra, more particularly, while taking care of the minor child.

On the other hand, the counsel for the respondent submits that the dispute had arisen between the parties, on account of wrongful behaviour of the applicant. False allegations have been levelled against the respondent, at the instance of the applicant. Also, it is submitted that earlier, Panchayati compromise had taken place and the applicant had also felt sorry, for the mistake committed by her. In this regard, reference is made to Annexure R-1, as well as affidavit of the applicant and her father, which are Annexures R-2 and R-3.

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.

Now, adverting to the case in hand, it is pertinent to mention that the applicant is having no source of earning and is totally dependent upon her parental family and furthermore, she is also having the custody of the minor child. Other rounds of litigation, initiated at the instance of the applicant, for Restitution of Conjugal Rights, as well as for seeking maintenance, are already pending in the Courts at Ambala.

Considering the aforesaid fact situation and also keeping in

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view the preference to be given to the convenience of the wife, in case of transfer applications, relating to the matrimonial dispute, the application is accepted and the petition under Section 13-A of the Hindu Marriage Act, titled '*Aman Kumar Vs. Neha Lohat*' (Annexure P-1), filed by the respondent-husband, stands transferred from the Family Court, Kurukshetra, to the Court of competent jurisdiction at Ambala. The requisite record of the aforesaid case be sent by the Family Court, Kurukshetra, to the District and Sessions Judge, Ambala.

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

24.10.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No