



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

Sr. No.107

TA-754-2023

Date of Decision: 18.09.2024

HELEN HARRISON

....Applicant

Versus

DENNIS R. HARRISON

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Siddharth Gupta, Advocate
for the applicant.

Ms. Kanwal S. Walia, Advocate
for the respondent.

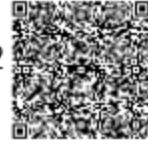
ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the civil suit, titled '*Wing Commander Dennis R. Harrison (Retd.) Vs. Ms. Helen*', filed by the respondent-husband, pending in the Court of Civil Judge (Senior Division), Jalandhar and she seeks transfer of the same to the Court of competent jurisdiction at Gurugram.

In pursuance of the notice issued, respondent made appearance through counsel and filed reply.

Learned counsel for the parties heard.

It is submitted by the counsel for the applicant that the marriage between the parties to the lis had taken place on 12.11.1967. Two daughters were born from this wedlock on 02.05.1969 and 16.03.1972, who are presently married and residing in their respective matrimonial houses.



However, due to the matrimonial discord, the parties are residing separate. Also, it is submitted that it is projected by the respondent that the petition for divorce by mutual consent bearing No.594 of 1994, titled '*Wg. Cdr. Dennis R. Harrison Vs. Helen Harrison*', was filed in Tis Hazari Court, New Delhi and the same was allowed, thereby dissolving the marriage by way of decree dated 03.10.1994. However, it is submitted by the counsel for the applicant that the applicant was never summoned, nor associated in the alleged Court proceedings. Thereafter, the respondent-husband had asserted about his second marriage, having performed with Saroj S. Harrison. It is submitted that, in this backdrop, the suit in hand was filed by the applicant. The applicant is more than 80 years of age and the distance between Jalandhar to Gurugram is about 450 kilometres. The applicant is not having any source of earning. In the given circumstances, it is submitted that it is difficult for the applicant to defend the civil suit, from such a distance. As such, a prayer has been made for transfer of the civil suit from the Courts at Jalandhar, to the Courts at Gurugram.

On the other hand, the counsel for the respondent has refuted the claim of the applicant. In fact, it is submitted by the counsel for the respondent that the respondent is 79 years old. He is a retired Air Veteran, who served for over 22 years. Also, it is submitted that he is having various medical ailments. He is a chronic heart patient and implant of a high intensity pace-maker was done in the year 2014, which requires close monitoring by the medical persons. In the given circumstances, it is submitted that it shall be difficult for him to commute 450 kilometres, from Jalandhar, to pursue the civil suit, if so transferred to Gurugram.

Furthermore, it is submitted by the counsel for the respondent



that the divorce has already been effected between the parties and now, only to usurp the service benefits, the applicant is asserting herself to be the wife of the respondent. Also, it is submitted that the applicant is a retired Principal from a Private School and has an independent house and lot of money at her disposal, including the service benefits. Moreover, it is submitted that the applicant is living with her younger daughter and son-in-law. In the given circumstances, she is in a position to defend the civil suit, if the transfer application, as such, is not allowed.

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.

Adverting to the case in hand, undisputedly, both the applicant and the respondent are falling in the age-group of 75 plus. In the given circumstances, it is quite obvious that both of them, must be having certain old-age-related medical ailments. The question, with regard to the divorce having effected or not, does not fall within the purview of the transfer application. The allegations and counter-allegations, can be considered by the Court concerned, at the time of decision of the civil suit, which is sought to be transferred. Admittedly, the distance between Jalandhar and Gurugram is 450 kilometres. In any case, to cover such a distance, at the age of the applicant, as well as the respondent, inconvenience will be caused to the parties concerned.

Though, it is a settled position of law that the convenience of the wife, ought to be taken into consideration, while considering the transfer application, in case of matrimonial dispute, but however, this is not a thumb



rule. The circumstances, as spelt out from the material brought on record, also ought to be taken into consideration. Precisely, on this account, considering the age of both the applicant and the respondent and considering the distance between the place, where the litigation is already pending and where it is proposed to be transferred, it is appropriate if the civil suit in hand is transferred to a place, which is equi-distant, from Jalandhar, as well as Gurugram.

Considering the aforesaid fact situation, it shall be in the fitness of circumstances, if the civil suit titled '*Wing Commander Dennis R. Harrison (Retd.) Vs. Ms. Helen*', filed by the respondent-husband, is transferred and the proceedings are conducted in the Courts at Ambala. As such, it is so ordered. The requisite record of the aforesaid civil suit be sent by the Court concerned, to the District and Sessions Judge, Ambala.

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

In view of the aforesaid terms, the application stands disposed of.

18.09.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No