



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.217

TA-859-2023 (O&M)
Date of Decision: 01.08.2024

MUSKAN

....Applicant

Versus

MOHIT

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Shiv Charan Bhola, legal aid counsel,
for the applicant.

None for the respondent.

ARCHANA PURI, J. (Oral)

CM-12476-CII-2023

Keeping in view the averments made in the application, same is
allowed.

Main case

The applicant-wife has filed the present application for seeking
transfer of the petition under Section 13 of the Hindu Marriage, titled '*Mohit
Vs. Muskan*', filed at the instance of respondent-husband, which is pending
in the Family Court Rohtak, to the Court of competent jurisdiction at
Bhiwani.

In pursuance of the notice issued, respondent did not make
appearance, despite service. As such, he is proceeded against *ex parte*.

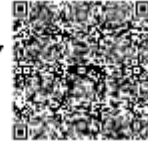
Learned counsel for the applicant-wife heard.



It is submitted by learned counsel for the applicant that one son born from the wedlock of the parties to the lis, is presently in the care and custody of the applicant. Even, the applicant has got lodged an FIR bearing No.165 dated 13.10.2022, under Sections 498-A, 323, 406, 506 and 34 IPC, at Police Station Women, District Bhiwani and trial qua the same is pending in the Courts at Bhiwani. Also, the applicant has filed petition under Section 125 Cr.P.C., which is also pending in the Courts at Bhiwani. In these circumstances, it is submitted by learned counsel that it is difficult for the applicant to defend the divorce petition, filed at the instance of the respondent-husband, at a distance of 50-55 kilometres, from the place of residence, more particularly, taking into consideration the fact of the minor child, being in her care and custody. As such, a prayer has been made for transfer of the case, pending at Family Court, Rohtak, to the Court of competent jurisdiction at Bhiwani.

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.

Considering the submissions made by learned counsel for the applicant and the various circumstances, as spelt out, the application, as such, is hereby accepted and the petition under Section 13 of the Hindu Marriage, titled '*Mohit Vs. Muskan*', filed at the instance of respondent-husband, stands transferred from the Family Court, Rohtak to the Court of competent jurisdiction at Bhiwani. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court, Rohtak, to District and Sessions Judge, Bhiwani.



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

01.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No