



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

Sr. No.217

TA-892-2023

Date of Decision: 07.08.2024

SAMTA

....Applicant

Versus

HARJINDER SINGH @ HARRY

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. R.K. Dadwal, Advocate
for the applicant.

Ms. Puja Chopra, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

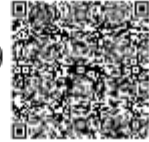
The applicant-wife has filed the present application for seeking transfer of the petition under Section 13 of the Hindu Marriage Act i.e. HMA/116/2023, titled '*Harjinder Singh @ Harry Vs. Samta*', filed at the instance of respondent-husband, pending in the Family Court (Camp Court) Jagraon, District Ludhiana and she seeks transfer of the same to the Court of competent jurisdiction at Hoshiarpur.

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, it is submitted by learned counsel for the applicant that the female child born from the wedlock of the parties to the lis, is aged 9 years and she is in the care and custody of the applicant.

However, due to the matrimonial discord, the applicant and respondent are



residing separate. Also, the applicant had got lodged an FIR bearing No.209 dated 10.10.2021, under Sections 406 and 498-A IPC, at Police Station Dasuya, District Hoshiarpur. Even, the petition under Section 125 Cr.P.C., filed at the instance of the applicant is pending in the Courts at Dasuya, District Hoshiarpur. Further, it is submitted by learned counsel that the applicant is working as a Medical Officer at CHC (Community Health Centre) at Village Mand Bhandar, Dasuya, District Hoshiarpur. In the given circumstances, it is difficult for the applicant to defend the divorce petition at Jagraon, with the school-going child, as Jagraon is at a distance of 170 kilometres, from the place of her residence, as well as her workplace. As such, a prayer has been made for transfer of the divorce petition, pending at Family Court (Camp Court) Jagraon, District Ludhiana, to the Court of competent jurisdiction at Hoshiarpur.

On the contrary, while making reference to the reply, learned counsel for the respondent submits that the applicant is posted as a Medical Officer and therefore, she is an earning hand and it should not be much difficult for her to defend the divorce petition in the Courts at Jagraon. As such, a prayer has been made for dismissal of the present application.

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, reverting to the present case, it is pertinent to mention that child born from the wedlock of the parties to the lis, who is aged 9 years, is in the care and custody of the applicant. She is a student of 4th Class, as disclosed by learned counsel for the applicant.



Considering the same and also considering the distance, for which the applicant is required to travel to defend the divorce petition, certainly inconvenience is caused. As such, the present application, is hereby accepted and the petition under Section 13 of the Hindu Marriage Act i.e. HMA/116/2023, titled '*Harjinder Singh @ Harry Vs. Samta*', filed at the instance of respondent-husband, stands transferred from the Family Court (Camp Court) Jagraon, District Ludhiana to the Court of competent jurisdiction at Hoshiarpur. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court (Camp Court) Jagraon, District Ludhiana, to District and Sessions Judge, Hoshiarpur.

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

07.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No