



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

Sr. No.203

TA-880-2024

Date of Decision: 22.10.2024

SHILPA SHARMA

....Applicant

Versus

NITIN SHARMA

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Deep Inder Singh Walia, Advocate
for the applicant.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the Civil Miscellaneous Application No.95 of 2024, titled '*Nitin Sharma Vs. Shilpa Sharma*', filed at her instance for seeking setting aside of the *ex parte* judgment and decree dated 23.08.2023, passed by learned Family Court, Panchkula in HMA-141-2022, which is pending in the Family Court, Panchkula and she seeks transfer of the same to the Court of competent jurisdiction at Ludhiana.

In pursuance of the notice issued, Mr. Aman Arora, Advocate, has made appearance on behalf of the respondent and filed Power of Attorney, which is taken on record. He submits that reply is not intended to be filed, though he contests the application.

Learned counsel for the parties heard.

At the very outset, the counsel for the applicant submits that the respondent had filed the petition under Section 12 of the Hindu Marriage Act i.e. HMA-141-2022, titled '*Nitin Sharma Vs. Shilpa Sharma*' and the



same was decreed *ex parte*, vide judgment dated 23.08.2023. However, when the applicant came to know about the same, she had filed an application for seeking setting aside of the judgment, which is now pending in the Courts at Panchkula.

Also, it is submitted by the counsel for the applicant that the applicant is having chronic kidney disease and is undergoing treatment from Dayanand Medical College and Hospital, Ludhiana. Further, it is submitted that the applicant has filed the petition under Section 125 Cr.P.C., as well as the complaint under Section 12 read with Sections 18, 19, 20, 22, 23, 24 and 31 of the Protection of Women from Domestic Violence Act and the same are pending in the Courts at Ludhiana. The applicant is also not having any source of earning. In the given circumstances, it is submitted that it is difficult for the applicant to commute a distance of about 125 kilometres, to pursue the application for setting aside of the *ex parte* judgment.

On the other hand, the counsel for the respondent makes a submission that the respondent has no objection, if the case is transferred to any other nearby place of Ludhiana, as he submits that there is chance of untoward incident taking place with the respondent, if the case is transferred to Ludhiana.

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, it is pertinent to mention that as submitted by the counsel for the applicant, the applicant is not having any source of earning and she is having health issues, for which she is



undergoing treatment from Dayanand Medical College and Hospital, Ludhiana. Besides the same, the two other petitions, filed by the applicant, are also pending in the Courts at Ludhiana. Though, the counsel for the respondent submits that there are chances of untoward incident, but however, on query by the Court, he was unable to state, as to what kind of untoward incident he perceives to take place, if the case is transferred to the Courts at Ludhiana. Considering the same, the submission made by the counsel for the respondent, is seemingly vague one, which is not worthy of acceptance.

Considering the aforesaid fact situation and taking into consideration the convenience of the applicant, who has no source of earning, more particularly, considering two cases already pending in the Courts at Ludhiana, the application is accepted and the Civil Miscellaneous Application No.95 of 2024, titled '*Nitin Sharma Vs. Shilpa Sharma*', filed by the applicant in HMA-141-2022, stands transferred from the Family Court, Panchkula, to the Court of competent jurisdiction at Ludhiana. The requisite record of the aforesaid case be sent by the Family Court, Panchkula, to the District and Sessions Judge, Ludhiana.

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

22.10.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes/No