



TA-1039-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.214

TA-1039-2023

Date of Decision: 19.07.2024

REKHA RANI

....Applicant

Versus

SANJEEV KUMAR

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Balwinder Singh Chahal, Advocate
for the applicant.

None for the respondent.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the petition under Section 9 of the Hindu Marriage Act i.e. HMA-118-2023, titled '*Sanjeev Kumar Vs. Rekha Rani*', (Annexure P-1), filed at the instance of respondent-husband, which is pending in the Family Court, Faridkot, to the Court of competent jurisdiction at Sirsa.

In pursuance of the notice issued, respondent did not make appearance.

Learned counsel for the applicant-wife heard.

The material facts, to be noticed, are that the marriage between the parties to the lis had taken place on 17.04.2016 and from their wedlock, two male children were born, who are aged about 6 years and 5 years. They are in the care and custody of the applicant. However, due to matrimonial dispute, the parties are residing separate. It has also been submitted that though, it has not been mentioned in the application, but



however, petition under Section 125 Cr.P.C., was filed by the applicant-wife, which is pending in the Courts at Faridkot, which is at an initial stage.

The respondent-husband has filed the petition under Section 9 of the Hindu Marriage Act thereafter. It is submitted by learned counsel that with two small children, it is difficult for the applicant to defend the petition under Section 9 of the Hindu Marriage Act, filed at the instance of the respondent-husband, more particularly, when she is not having any source of income. As such, a prayer has been made for transfer of the case, pending at Family Court, Faridkot, to the Court of competent jurisdiction at Sirsa.

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 from the application, the application, as such, is hereby accepted and the petition under Section 9 of the Hindu Marriage Act i.e. HMA-118-2023, titled '*Sanjeev Kumar Vs. Rekha Rani*', (Annexure P-1), filed at the instance of respondent-husband, stands transferred from the Family Court, Faridkot to the Court of competent jurisdiction at Sirsa. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court, Faridkot to District and Sessions

Judge, Sirsa.



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

19.07.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No