



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

Sr. No.209

TA-1085-2023

Date of Decision: 28.08.2024

AMARJIT KAUR @ ANU

....Applicant

Versus

LOVEPREET @ RICKY AND OTHERS

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Kulwinder S. Lakhanpal, Advocate
for the applicant.

None for respondent No.1.

None for respondent No.2.

ARCHANA PURI, J. (Oral)

At this stage, process of service of respondent No.3 is dispensed with, as he is the proforma respondent. Also, respondent No.2 is a proforma respondent.

None has made appearance on behalf of respondent No.1- Lovepreet @ Ricky, despite service. He is the sole contesting respondent. As such, he is proceeded against *ex parte*.

Learned counsel for the applicant heard.

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/109/2023, titled '*Lovepreet @ Ricky Vs. Amarjit Kaur @ Anu*', filed at the instance of respondent No.1-husband, pending in the Family Court (Camp Court) Phagwara, District Kapurthala, to the Court of competent jurisdiction at Hoshiarpur.



At the very outset, the counsel for the applicant submits that one female child, born from the wedlock of the parties to the lis, is presently in the care and custody of the applicant. Due to the matrimonial discord, the applicant had filed petition under the Protection of Women from Domestic Violence Act, which was filed prior to filing of the petition under Section 9 of the Hindu Marriage Act and the same is pending in the Courts at Hoshiarpur. The applicant is a housewife and has no source of earning and as such, is dependent upon her parents, for all her needs. In the given circumstances, it is submitted that it is difficult for the applicant to defend the petition under Section 9 of the Hindu Marriage Act, pending at Phagwara, District Kapurthala, which is at a distance of 70 kilometres from the place of her residence, more particularly, while taking care of the minor child.

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.

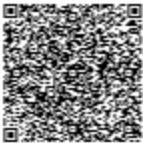


10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial 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, keeping in view the submissions made by the counsel for the applicant, more particularly, considering the fact of the minor child to be in the care and custody of the applicant, the present application is hereby accepted and the petition under Section 9 of the Hindu Marriage Act i.e. HMA/109/2023, titled '*Lovepreet @ Ricky Vs. Amarjit Kaur @ Anu*', filed at the instance of respondent No.1-husband, stands transferred from Family Court (Camp Court) Phagwara, District Kapurthala, to the Court of competent jurisdiction at Hoshiarpur. The requisite record of the aforesaid case be sent by Family Court (Camp Court) Phagwara, District



Kapurthala, to the District and Sessions Judge, Hoshiarpur.

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

28.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No