



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.106

TA-1203-2023 (O&M)

Date of Decision: 22.08.2024

KAVITA

....Applicant

Versus

VIPIN GARG

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Rohit Kumar, Advocate
for the applicant.

None for the respondent.

ARCHANA PURI, J. (Oral)

CM-17085-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 9 of the Hindu Marriage Act i.e.
DMC/9/2023, titled '*Vipan Garg Vs. Kavita*', filed at the instance of
respondent-husband, pending in Family Court Nabha, to the Court of
competent jurisdiction at Kalka, District Panchkula.

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



Learned counsel for the applicant-wife heard.

It is submitted by learned counsel for the applicant that no child was born from the wedlock of the parties to the lis. However, due to the matrimonial discord, the parties are residing separate. The applicant has lodged an FIR bearing No.189 dated 24.06.2023 under Sections 323, 406, 498-A and 506 IPC at Police Station Kalka, District Panchkula and the same is pending trial, in the Courts at Kalka. Also, it is submitted that the applicant has also filed petition under Section 125 Cr.P.C., after filing of the present transfer application. It is only as a counter-blast to the litigation filed at the instance of the applicant-wife, that petition under Section 9 of the Hindu Marriage Act has been filed by the respondent-husband. In the given circumstances, it is difficult for the applicant to defend the petition under Section 9 of the Hindu Marriage Act, from a distance of 120 kilometres, from the place of her residence. As such, a prayer has been made for transfer of the case, pending at Family Court Nabha, to the Court of competent jurisdiction at Panchkula.

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.

Taking into consideration the convenience of the applicant-wife, more particularly, considering the distance between Kalka and Nabha, the instant application is hereby accepted and the petition under Section 9 of the Hindu Marriage Act i.e. DMC/9/2023, titled '*Vipan Garg Vs. Kavita*', filed at the instance of respondent-husband, stands transferred from Family Court Nabha, to the Court of competent jurisdiction at Kalka, District



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Panchkula. The requisite record of the aforesaid case be sent by Family Court Nabha, to District and Sessions Judge, Panchkula.

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

22.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

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