



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

Sr. No.217

TA-1276-2023 (O&M)

Date of Decision: 12.08.2024

GURPREET KAUR

....Applicant

Versus

RAJINDER SINGH

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Hitesh Verma, Advocate
for the applicant.

Mr. Dilraj Singh Bhinder, Advocates
for the respondent.

ARCHANA PURI, J. (Oral)

CM-18284-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 divorce petition i.e. HMA/143/2023, titled '*Rajinder Singh
Vs. Gurpreet Kaur*', filed at the instance of respondent-husband, pending in
Family Court (Camp Court) Malout, District Sri Muktsar Sahib, to the Court
of competent jurisdiction at Bathinda.

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, learned counsel for the applicant has submitted that two children born from the wedlock of the parties to the lis, are presently residing with the paternal grand-parents i.e. the parents of the respondent-husband. The applicant was thrown out of the matrimonial home and now she is residing at her parental place, which is in Village Nandgarh, District Bathinda. Also, it is submitted that the applicant is a housewife and has no source of earning, whereas, the respondent is an Army personnel and posted in Kashmir. Further, it is submitted that the applicant has filed the petition under the Protection of Women from Domestic Violence Act, which is pending in the Courts at Bathinda. In the given circumstances, it is submitted that it is difficult for the applicant to pursue the divorce petition, at a distance of 40 kilometres from the place of her residence. As such, a prayer has been made for transfer of the case, pending at Family Court (Camp Court) Malout, District Sri Muktsar Sahib, to the Court of competent jurisdiction at Bathinda.

On the contrary, while making reference to the reply, learned counsel for the respondent has submitted that the place of residence of the applicant, is at a distance of about 20 kilometres from Bathinda, whereas, the distance from Village Nandgarh to Malout, is about 25 kilometres. In these circumstances, it is submitted that it is only a distance of five more kilometres, which the applicant ought to travel to pursue the divorce petition, if it is not transferred. Also, it is pointed out that the petition under the Protection of Women from Domestic Violence Act, has been filed later on, after filing of the divorce petition.

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, adverting to the case in hand, it is pertinent to mention that the applicant is resident of Village Nandgarh, which is at a distance of about 20 kilometres from Bathinda, where she is seeking transfer of the divorce petition. Even, Malout, as stated by learned counsel for the respondent, is at a distance of about 25 kilometres from the place of residence of the applicant. Even though, it is submitted by learned counsel for the respondent that the applicant is supposed to cover only five kilometres more, but however, the duration of the distance, as such, is not the sole ground, which ought to be taken into consideration. In fact, there are other circumstances also, spelt out, which are to be taken into consideration. The applicant is a housewife and she is allegedly having no source of earning. In the given circumstances, inconvenience ought to be caused to the applicant, which has to be given weightage.

Considering the same and also considering the submissions made by learned counsel for the applicant the present application is hereby accepted and the divorce petition i.e. HMA/143/2023, titled '*Rajinder Singh Vs. Gurpreet Kaur*', filed at the instance of respondent-husband, stands transferred from the Family Court (Camp Court) Malout, District Sri Muktsar Sahib, to the Court of competent jurisdiction at Bathinda. The requisite record of the aforesaid case be sent by the Family Court (Camp Court) Malout, District Sri Muktsar Sahib, to District and Sessions Judge, Bathinda.

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

12.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No