



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

TA-1402-2022(O&M)
Date of Decision: July 30, 2024

Manisha

...Applicant

Versus

Nitin Setia

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kushager Goyal, Advocate
for the applicant.

Mr.Ashwani Gaur, Advocate for
Ms.Shivangi Sharma, Advocate
for the respondent.

ARCHANA PURI, J.

The applicant-wife has filed the present application for seeking transfer of the petition under Section 9 of the Hindu Marriage Act, filed at the instance of respondent-husband, pending in the Family Court, Bhiwani, to the Court of competent jurisdiction at Sirsa.

In pursuance of the notice issued by the Court, respondent made appearance through counsel and filed reply.

Learned counsel for the parties heard.

It is submitted by learned counsel for the applicant that the marriage between the parties to lis was solemnized on 27.04.2015 and there



is one female child, who was born on 28.04.2018 and she is in the care and custody of the applicant. The applicant is posted as Officer Scale-I, in Union Bank of India, at Udaipur. Being single parent, the applicant is taking care of the minor child and also bearing responsibility of the old parents.

The respondent has filed the petition under Section 9 of the Hindu Marriage Act, at Bhiwani. Earlier, one complaint was filed by the applicant-wife before Superintendent of Police, Sirsa, which was marked to Women Police Station, Sirsa and respondent had, thereafter compromised in the said complaint. The trial, vis-a-vis, FIR bearing No.161 dated 18.06.2021 got registered at the instance of the applicant under Sections 323, 34, 406, 498-A and 506 IPC, is pending in the Courts at Sirsa and the same is now fixed for prosecution evidence. Even, petition under Section 125 Cr.P.C. for grant of maintenance was filed, at the instance of the applicant-wife and minor child, which is also pending, at Family Court Sirsa. Moreover, complaint under Sections 12, 18, 19, 20, 22 and 23 of the Domestic Violence Act, is also pending in the Courts at Sirsa.

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, filed at the behest of the respondent-husband at Bhiwani, which is at a distance of 160 Kms. from Sirsa. Even, it is submitted that applicant's father, who is an aged person, is suffering from multiple diseases.

However, in view of the contents of the reply, it is submitted by learned counsel for the respondent-husband that the sister of the applicant-



wife is residing at Bhiwani and the distance between Udaipur, the place of posting of the applicant to Bhiwani is 650 Kms. and the distance between Udaipur to Sirsa is 820 Kms. So, looking at this distance, it won't be difficult for the applicant to attend the case proceedings at Bhiwani, instead of Sirsa. Even, the applicant is now posted as Senior Manager, in Canara Bank, Pinjore, which is at a distance of 260 kms. from Bhiwani. Further, it is submitted that the proceedings can be pursued by family members of both the parties.

As such, a prayer has been made for dismissal of the transfer application.

In view of the submissions aforesaid, at the very outset, 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, at the instance of the wife, 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.

It is submitted that sister of the applicant is residing at Bhiwani. May it be so, but however, the convenience of the applicant-wife, who is also taking care of the minor child born from the wedlock of the parties, is required to be seen. May be the presence of the parties in the civil proceedings, as such, is not required all the time, but however, it has to be seen as to whether, the place where the petition has been filed, at the instance of the husband, is convenient place for the wife, to defend the



litigation.

As observed aforesaid, the applicant-wife finds Sirsa to be a convenient place, where the transfer of the petition is sought, more particularly, where earlier litigation arising from the matrimonial discord is already pending.

Considering the submissions made by learned counsel for the parties and the various circumstances, as spelt out from the application, the application, as such, is hereby accepted and petition bearing No.DMC-207-2022, titled as ‘Nitin Setia vs. Smt.Manisha’, filed under Section 9 of the Hindu Marriage Act, 1955’, stands transferred from the Family Court, Bhiwani to the Court of competent jurisdiction at Sirsa. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court, Bhiwani to District and Sessions Judge, Sirsa.

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.

July 30, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No