

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.945 of 2015

Date of decision: 16.03.2016

Sushma and others

... Applicants

Vs.

Kapil @ Sahil Bansal

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. C.B. Kaushik, Advocate
for the applicants.

Mr. Anoop Singla, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J. (ORAL)

Applicants, by way of instant application under Section 24 read with Section 151 of the Code of Civil Procedure (for short 'CPC'), seek transfer of the petition under Section 13 of the Hindu Marriage Act, 1955 ('the Act' for short) titled as Sahil Bansal Vs. Sushma etc., pending before the learned Family Court at Faridkot to the learned Court of competent jurisdiction at Bhiwani.

Notice of motion was issued and further proceedings before the learned Court at Faridkot were stayed.

Heard learned counsel for the parties.

It has gone undisputed between the parties that there are two minor children out of this wedlock and the applicant-wife, along with her minor children, is staying with her parents at Bhiwani. Respondent-husband has not paid any amount of maintenance to the applicants so far. Applicant-wife is not having any regular source of income. She is dependent on her parents, who are bearing the expenses for the maintenance of applicant-wife as well as her two minor daughters. Further, proceedings instituted on 04.07.2015 by the applicant-wife under Section 125 of the Code of Criminal Procedure were already pending, when the respondent-husband filed the petition under Section 13 of the Act before the learned Family Court at Faridkot on 25.08.2015.

After giving anxious consideration to the rival contentions and careful perusal of the record of the case, this Court is of the considered opinion that instant one has been found to be a fit case ordering the transfer of petition under Section 13 of the Act from Faridkot to Bhiwani. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicant-wife and against the respondent-husband. In the circumstances of the case, it will not only be inconvenient but would be very difficult for the applicant-wife to go from Bhiwani to Faridkot to pursue the litigation imposed on her by the respondent-husband under Section 13 of the Act.

Convenience of the wife in transfer applications, like the present one, arising out of a matrimonial dispute, is one of the relevant consideration. Further, distance between the two places, financial status of the wife, her source of income, her age as well as her responsibility for bringing up the minor children, are the relevant factors to be considered,

while deciding the transfer applications like the present one.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court: -

1. *Mrs. Maneka Sanjay Gandhi and another Vs. Miss Rani Jethmalani*, AIR 1979 (SC) 468.
2. *Dr. Subramaniam Swamy Vs. Ramakrishna Hegde*, 1990 (1) SCC 4.
3. *Neelam Kanwar Vs. Devinder Singh Kanwar*, 2000 (10) SCC 589.
4. *Sumita Singh Vs. Kumar Sanjay and another*, AIR 2002 (SC) 396.
5. *Mangla Patil Kale Vs. Sanjeev Kumar Kale*, 2003 (10) SCC 280.
6. *Fatema Vs. Jafri Syed Husain @ Syed Parvez Jafferri*, AIR 2009 (SC) 1773.
7. *Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani*, AIR 2009 (SC) 1374.
8. *Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others*, AIR 2008 SC 1333.
9. *Nisha Vs. Dharmenda Pratap Singh Rathore*, 2015 (3) All. LJ 168.
10. *M.V. Rekha Vs. Sathya*, 2011 (2) HLR 34.
11. *Sneha Vs. Vinayak*, 2013 ILR (Karnataka) 165.
12. *Rimpal Vs. Balinder Kumar*, 2010 (7) RCR (Civil) 286.
13. *Anju Vs. Sanjay*, 2011 (6) RCR (Civil) 112.
14. *Komal Devi @ Komal Kumari @ Komal Rani Vs. Harbhajan Singh*, 2012 (8) RCR (Civil) 84.

The relevant observations made by the Hon'ble Supreme Court in para 14 of its judgment in **Kulwinder Kaur @ Kulwinder Gurcharan**

Singh's case (supra), which can be gainfully followed in the present case, read as under: -

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from

which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.”

The cardinal principle for exercise of power under Section 24 of the Civil Procedure Code is that the ends of justice demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever the Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereto and circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Generally, it is the wife's convenience which must be looked at by the Courts, while deciding a transfer application.

Reverting to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as different High Courts, including this Court, it is unhesitatingly held that applicant-wife is entitled for getting the petition under Section 13 of the Act transferred from Faridkot to Bhiwani, so as to enable her to pursue the litigation without facing any undue hardship or harassment at the hands of the respondent-husband. It is the settled principle of law that justice is not only to be done but it should also appear to have been done. If the applicant-wife is forced to go from Bhiwani to Faridkot, it would amount denial of justice to her. Thus, to strike a balance between the parties with a view to do complete and substantial justice and proceeding on a holistic view of the matter, this Court is of the considered view that it would be just and

expedient to transfer the petition under Section 13 of the Act from Faridkot to Bhiwani.

No other argument was raised on behalf of either of the parties.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant application deserves to be accepted and the same is hereby allowed. Petition under Section 13 of the Act filed by the respondent-husband at Faridkot is ordered to be transferred to Bhiwani.

Accordingly, the learned District Judge, Faridkot is directed to send the complete record of the petition filed by the respondent-husband under Section 13 of the Act titled as Sahil Bansal Vs. Sushma etc. to the learned District Judge, Bhiwani, at an early date and in any case within a period of one month from the date of receipt of certified copy of this order. Learned District Judge, Bhiwani is also directed either to decide the case himself or assign it to the learned Court of competent jurisdiction for its early decision, in accordance with law.

With the abovesaid observations made and directions issued, present application stands disposed of.

[RAMESHWAR SINGH MALIK]
JUDGE

16.03.2016
vishnu