
(2022) 08 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Transfer Application No. 895 Of 2022 (O&M)

Amreen Kaur Sidhu

APPELLANT

Vs

Dr. Jasbir Kaur Gill

RESPONDENT

Date of Decision : 16-08-2022

Acts Referred:

Protection Of Women From Domestic Violence Act, 2005 — Section 12
Indian Penal Code, 1860 — Section 377, 406, 498A
Guardians And Wards Act, 1890 — Section 7, 25
Code Of Civil Procedure, 1908 — Section 24

Citation : (2022) 08 P&H CK 0075

Hon'ble Judges : Arvind Singh Sangwan, J

Bench : Single Bench

Advocate : H. S. Randhawa

Final Decision : Allowed

Judgement

Arvind Singh Sangwan, J

Prayer in this petition is for transfer of the Civil Suit filed by the respondent, bearing No. 1694/2022, titled as Dr. Jasbir Kaur Gill vs. Amreen Kaur Sidhu, pending before Civil Judge (Jr. Divn-17), Jalandhar to the competent Court of jurisdiction at Patiala.

Learned counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner has filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and has also got registered FIR No. 40 dated 14.06.2021, under Sections 406, 498-A and 377 of the IPC at Patiala, which are pending. It is further submitted that vide order dated 14.09.2021 passed in TA Nos. 567 & 600 of 2021, a civil suit bearing No. 1610/2021 and a petition under the Hindu Marriage Act, filed by the husband of the petitioner, have already been transferred to the competent Court of jurisdiction at Patiala. It is further submitted that vide order dated 13.10.2021 passed in TA-583-2021, the petition filed by the husband of the petitioner, under Sections 7 and 25 of the

Guardians and Wards Act, 1890, has also been transferred to a competent Court of jurisdiction at Patiala. The operative part of the order reads as under:

"This Court while deciding TA No.567 and 600 of 2021 between the same parties has passed the following order:-

"By this order, two transfer applications filed by the wife of the respondent shall stand disposed of.

As per the office report, notice issued to the respondent has been received back served. However, he remains unrepresented. The petitioner prays for transfer of the proceedings in the following cases:-

1. Civil suit No.1610/2021 (Gurbir Singh vs. Amreen Kaur Gill) from the Court of learned Civil Judge (Sr. Div.), Jalandhar, to the Court of learned Principal Judge, Family Court, Patiala.

2. HMA/177/2021 (Gurbir Singh Gill vs. Amreen Kaur Sidhu) from the Court of learned Addl. Principal Judge, Family Court-II, Jalandhar, to the Court of learned Principal Judge, Family Court, Patiala.

The proceedings are pending at District Court, Jalandhar. The petitioner claims that the distance between Patiala and Jalandhar is 150 kms. and the respondent (husband) is already defending proceedings in FIR No.40, dated 14.06.2021, registered under Section 406, 498-A and 377 IPC, at Police Station PS Women, District Patiala and application under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

The petitioner is also stated to be living with her minor daughter aged about 1 year and 4 months.

Keeping in view the aforesaid facts, the petitions are allowed. The proceedings in civil suit No.1610/2021 (Gurbir Singh vs. Amreen Kaur Gill) pending in the Court of learned Civil Judge (Sr. Div.), Jalandhar, and HMA/177/2021 (Gurbir Singh Gill vs. Amreen Kaur Sidhu) pending in the Court of learned Addl. Principal Judge, Family Court-II, Jalandhar, are ordered to be transferred to the Court of competent jurisdiction at Patiala. The transferor Court is requested to remit the case files to the transferee Court forthwith. The parties are directed to appear before the District Judge, Patiala, on 05.10.2021 who shall either decide the matters himself or assign it to the Court of competent jurisdiction at Patiala.

All the pending miscellaneous application(s), if any, are also disposed of."

Learned counsel representing the petitioner prays for transfer of the proceedings of the petition filed under Section 7 and 25 of the Guardians and Wards Act, 1890, bearing No.GW/92/2021, titled as "Gurbir Singh Gill vs. Amreen Kaur Gill" pending in the Family Court-II, Jalandhar, to the Court of competent jurisdiction at Patiala, on the same grounds.

As per the office report, notice issued to the respondent has been received back

served. However, he remains unrepresented.

Keeping in view the aforesaid facts, the petition is allowed.

The petition filed under Section 7 and 25 of the Guardians and Wards Act, 1890, bearing No.GW/92/2021, titled as "Gurbir Singh Gill vs. Amreen Kaur Gill" pending in the Family Court-II, Jalandhar, is ordered to be transferred to the Court of competent jurisdiction at Patiala.

The transferor Court is requested to remit the case file to the transferee Court forthwith.

The parties through their counsel are directed to appear before the transferee Court on 08.11.2021."

Learned counsel for the petitioner further submits that since the aforesaid proceedings have already been transferred by the co-ordinate Bench to Patiala, the present civil suit, which is now pending in the Court of Civil Judge (Jr. Divn.-17), Jalandhar, may also be transferred to the competent Court of jurisdiction at Patiala.

Learned counsel has relied upon the judgments Sumita Singh Vs. Kumar Sanjay, 2002 SC 396 and Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi, 2005(12) SCC 237, wherein the Hon'ble Supreme Court observed that "while deciding the transfer application, the Courts are required to give more weightage and consideration to the convenience of the female litigants and transfer of legal proceedings from one Court to another should ordinarily be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships."

Learned counsel for the petitioner has further relied upon 2022 Live Law (SC) 627 N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha, wherein Hon'ble Supreme Court has held as under:

"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 socioeconomic 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.”

It is well settled that while considering the transfer of a matrimonial dispute/case at the instance of the wife, the Court is to consider family condition of the wife, custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important, convenience of the wife i.e. she cannot travel alone without assistance of a male member of her family, connectivity of the place to and fro from her place of residence as well as bearing of the litigation charges and travelling expenses.

After hearing the counsel for the petitioner, considering the fact that the present civil suit is arising out of a matrimonial discord between the parties and three proceedings have already been transferred as noticed above and also considering the fact that the issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner will have to bear the litigation expenses and transportation expenses and also in view of the judgments rendered in Sumita Singh’s case, Rajani Kishor Pardeshi’s case as well as N.C.V. Aishwarya's case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

- (i) The Civil Suit filed by the respondent, bearing No. 1694/2022, titled as Dr. Jasbir Kaur Gill vs. Amreen Kaur Sidhu, pending before Civil Judge (Jr. Divn-17), Jalandhar will be transferred to the competent Court of jurisdiction at Patiala.
- (ii) The District Judge, Patiala will assign the said petition to the competent Court of jurisdiction.
- (iii) The Court at Jalandhar is directed to transfer all the record pertaining to the aforesaid case to District Judge, Patiala.
- (iv) The parties are directed to appear before the trial Court at Patiala within a period of 01 month from today.

However, if the respondent intends to contest the present petition, she is granted liberty to revive the present petition, if so advised.