

(2026) 02 SHI CK 1679
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 471 Of 2025

Deepa Sharma

APPELLANT

Vs

Rishab Sarswati

RESPONDENT

Date of Decision : 23-02-2026

Acts Referred:

Code Of Civil Procedure, 1908 — Section 24, 25, Order 9 Rule 13
Hindu Marriage Act, 1955 — Section 13(1)(ia), 13(1)(ib)

Citation : (2026) 02 SHI CK 1679

Hon'ble Judges : Romesh Verma, J

Bench : Single Bench

Advocate : Rajiv Rai, Gurdev Negi, Poonam Gehlot

Final Decision : Allowed

Judgement

Romesh Verma, J

1. The petitioner has approached this Court for transfer of the petition filed for grant of decree of divorce on the ground of adultery and cruelty under Section 13(1) (ia) & (ib) of Hindu Marriage Act, 1955 in HMA No. 354 of 2023, titled Rishab Sarswati vs. Deepa Sharma & another, before Family Court, District Shimla H.P. to Family Court, District Mandi, H.P.
2. The copy of the divorce petition has been appended by learned counsel for the petitioner. It is contended by learned counsel for the petitioner that the present petitioner was proceeded ex-parte in those proceedings. However, subsequently on coming to know about passing of the said order, an application under Order 9 Rule 13 of CPC for setting aside the ex-parte order has been preferred and said application is still pending for its adjudication.
3. The petitioner has averred that she is currently living at Joginder Nagar alongwith her daughter Garvika Saraswati, who is studying at Mount Mourya International School, Joginder Nagar, District Mandi, H.P. and School certificate of daughter Garvika has been enclosed with the petition as Annexure P-2.

4. It has been averred in the petition that the daughter of the parties is only 6 years old. That distance between Joginder Nagar and Shimla is more than 200 k.m. and it would not be convenient for the petitioner to pursue the petition for divorce, which has been filed by the respondent in Family Court, Shimla.

5. It has been averred that apart from the inconvenience on account of distance, if divorce petition is not transferred, in that event, the petitioner would not be able to meet the expenses as the petitioner is already bearing the entire expenses of daughter Garvika and no financial or emotional support is there from the respondent to the petitioner. It has been further averred that being a female, it is very difficult and inconvenient for her to travel alone frequently 200 k.m. distance.

6. Therefore, under such circumstances, the present petitioner has preferred this petition for the transfer of the divorce petition from Family Court, District Shimla H.P. to Family Court, District Mandi, H.P.

7. The present petition is primarily for the transfer of the divorce proceedings. Therefore, without touching the merits of the case, this Court shall proceed further to examine whether the prayer of the petitioner can be accepted.

8. Upon issuance of notice, Ms. Poonam Gehlot, learned counsel appeared for the respondent and she has vehemently opposed the said prayer of the petitioner. She has submitted that keeping in view the conduct of the present petitioner, no relief can be granted to her and the averments as made in the petition are imaginary and incorrect.

9. While dealing with the issue of transfer of proceedings from one court to another in matrimonial matters, the convenience of wife is to be preferred over the convenience of husband, in terms of the mandate of the Hon'ble Supreme Court in Sumita Singh v. Kumar Sanjay and another (2001) 10 SCC 41, wherein it was held by the Hon'ble Supreme Court that in a case where the wife seeks transfer of the petition, then as against husband's convenience, it is the wife's convenience which must be looked at.

9(i) In Soma Choudhury v. Gourab Choudhary (2004) 13 SCC 462, it was held by the Hon'ble Supreme Court that once the wife alleges that she has no source of income, whatsoever and was entirely dependent upon her father, who was a retired government servant, then it was the convenience of the wife which was required to be looked into and not that of the husband, who had pleaded a threat to his life. It was further observed that if the respondent therein had any threat to his life, he could take police help by making an appropriate application to this effect.

9(ii) In Rajani Kishor Pardeshi v. Kishor Babulal Pardeshi (2005) 12 SCC 237, in a case seeking transfer of the case at the instance of the wife, it was specifically held by the Hon'ble Supreme Court that convenience of wife was the prime consideration.

9(iii) Similarly, while dealing with the application for transfer of proceedings in *Kulwinder Kaur alias Kulwinder Gurcharan Singh v. Kandi Friends Education Trust and others* (2008) 3 SCC 659, the Hon'ble Supreme Court after analyzing the provisions of Sections 24 and 25 of the Code of Civil Procedure laid down certain broad parameters for transfer of cases and it was held:-

"23. 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 the plaintiff or the 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.

9(iv) In *Arti Rani alias Pinki Devi and another v. Dharmendra Kumar Gupta* (2008) 9 SCC 353, the Hon'ble Supreme Court was dealing with a case where the wife had sought transfer of proceedings on the ground that she was having a minor child and it was difficult for her to attend the Court at Palamu, Daltonganj, which was in the State of Jharkhand and at a quite distance from Patna where she was now residing with her child. Taking into consideration the convenience of the wife, the proceedings were ordered to be transferred.

9(v) Similarly, in *Anjali Ashok Sadhwani v. Ashok Kishinchand Sadhwani* AIR 2009 SC 1374, the wife had sought transfer of the case to Bombay from Indore in Madhya Pradesh on the ground of inconvenience as there was none in her family to escort her to Indore and on this ground the proceedings were ordered to be transferred.

9(vi). In the case of *Rajani Kishor Pardeshi Versus Kishor Babulal Pardeshi* (2005) 12 SCC 237, the Hon'ble Supreme Court has held as under:-

"In this type of matter, the convenience of the wife is to be preferred over the convenience of the husband. Hindu Marriage Petition No.6 of 2004, *Kishor Babulal Pardeshi v. Rajani Kishor Pardeshi* pending before the Court of Civil Judge, Senior Division at Panvel, Mumbai, Maharashtra is transferred to the Family Court of proper jurisdiction at Satana,

9(vii). In Civil Appeal No.4894 of 2022 [arising out of SLP(C) No(s).16465 of 2021], titled as *N.C.V. Aishwarya versus A.S. Saravana Karthik Sha*, the Hon'ble

Supreme Court has outlined the cardinal principles for considering prayer for transfer of proceedings, from one Court-place to another, in matrimonial matters, in following terms:-

"8. It is not disputed that the appellant is the resident of Chennai and that the appellant's husband- respondent herein is the resident of Vellore and he is employed. The appellant who is 21 years old does not have any source of income of her own as she is not employed and is totally dependent on her parents for her livelihood. In order to attend the court proceedings of the case filed by her husband at Vellore she has to travel alone all the way from Chennai to Vellore as her parents are not in a position to accompany her on account of their old age. Secondly, the appellant has also filed a petition, H.M.O.P. No.1741 of 2021, for restitution of conjugal rights and another petition, M.C. Sr. No.672 of 2021, for her maintenance before the Family Court at Chennai.

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."

10. Taking into account the entirety of the facts and circumstances of the case and the cardinal principles outlined by the Hon'ble Supreme Court, in Sumita Singh, Rajani Pardeshi and N.C.V. Aishwarya's cases [supra], this Court is of considered view, that the present petition deserves to be allowed, for the reasons, that firstly, the petitioner is residing at Joginder Nagar, District Mandi, H.P. which is at a distance of more than 200 k.m. from Shimla. and secondly, minor daughter Garvika Saraswati has been admitted at Mount Mourya International School Joginder Nagar, District Mandi, H.P. and School certificate of the daughter Garvika has been enclosed with the petition as Annexure P-2 and thirdly, financial constraints of petitioner-wife restrains her going from Joginder Nagar to Shimla to attend each and every hearing(s) of the case, the same is also a relevant factor as petitioner would not be able to meet the expenses as the petitioner is already bearing the entire expenses of the daughter Garvika and no financial or emotional support is there from the respondent to the petitioner.

11. A similar issue, praying for transfer of proceedings from one Court to another, has been dealt with in CMPMO No.466 of 2020, titled as Monu versus Rakesh Kumar, decided on 26.07.2023 and in other matters i.e. CMPMO No.604 of 2023, titled as Manisha Thakur versus Akash Chauhan, decided on 05.12.2023 and in CMPMO No.688 of 2023, titled as Sumiti Chandel versus Parvesh Singh, decided on 10.01.2024, in following terms:-

"6. In view of the mandate of law referred to above, and the no objection accorded by the learned counsel for the respondent herein; the present petition is allowed and H.M. Misc. Petition No. 351 of 2023, titled as Parvesh Singh Vs Sumiti Chandel, pending before the Additional Principal Judge Family Court Hamirpur, Himachal Pradesh is ordered to be transferred to the Principal Judge, Family Court, Solan, Himachal Pradesh."

12. In a matter having similar facts and situation, this Court has allowed the transfer of proceedings on request of wife, in CMPMO No.706 of 2023, titled as Chandni versus Rajeev Pathik, decided on 04.11.2024, in following terms:-

"8.In view of the above discussion and for the reasons, recorded herein-above, the present petition is allowed; and the proceedings i.e. HMA No.179-S/3 of 2023, titled as Rajeev Pathik versus Chandni, pending before the Court of Learned Principal Judge (Family Court), Shimla (HP) are ordered to be transferred to the Court of Learned Principal Judge [Family Court] Mandi, District Mandi [HP]."

13. Learned counsel for the respondent has relied upon the copy of the orders as passed by Hon'ble Supreme Court in Transfer Petition (Civil) No. 2466 of 2024, titled Neeta Kumari vs. Sanjay Kumar, decided on 12.02.2025 and by this Court in CMPMO No. 685 of 2025, titled Diksha vs. Vishal, decided on 05.06.2025. In the humble opinion of this Court, the said judgments do not help the respondent.

14. In view of the above discussion and for the reasons, recorded herein-above, the present petition is allowed; and the proceedings i.e. HMA No.354 of 2023, [as in Annexure P-1] titled as Sh. Rishab Sarswati vs. Smt. Deepa Sharma & another, pending before the Court of Learned Principal Judge [Family Court], Shimla, District Shimla, HP are ordered to be transferred to the Court of Learned Principal Judge [Family Court] Mandi, District Mandi,HP.

15. Consequent upon the directions contained here-in- above, Registry is directed to inform the Court of Learned Principal Judge (Family Court), Shimla, District Shimla HP to transfer entire case records of HMA No. 354 of 2023, titled as Sh. Rishab Sarswati vs. Smt. Deepa Sharma & another to the Court of Learned Principal Judge [Family Court] Mandi, District Mandi,HP within two weeks from today; with further directions to the Court of Family Court, Mandi, District Mandi, H.P. to issue fresh notice(s) to the parties and then to proceed further in the matter, in accordance with law.

16. In aforesaid terms, the instant petition is allowed and all pending

miscellaneous application(s), if any, shall also stand disposed of, accordingly.