

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

205

TA No.326 of 2020(O&M)
Date of decision:31.01.2023

Rupinder Singh

...Petitioner(s)

vs

Kiran and anr.

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Nitin Sachdeva, Advocate for the petitioner.

Mr. ManujNagrath, Advocate for respondent No.1.

NIDHI GUPTA, J.(Oral)

1. Prayer in this transfer petition filed by petitioner husband is for transfer of the Civil Suit No.973 of 2019 titled as 'Kiran vs. Rupinder Singh &anr.', filed by respondent No.1-wife pending in the Court of Civil Judge, Junior Division, Gurdaspur to a court of competent jurisdiction at Ludhiana. The said Suit is '*for Mandatory Injunction directing the defendants to return the articles of the plaintiff as mentioned and detailed in the Annexure 'A' attached*'.

2. Learned counsel for the petitioner submits that the petitioner is suffering from brain cancer, and it is impossible for him to travel. Ld. Counsel refers to Annexures P2 to P5, which is medical and treatment record of the petitioner, who is diagnosed as a case of Oligodendroglioma Grade-II, and submits that the petitioner has had multiple episodes of seizures and after surgery, the petitioner is undergoing follow-up treatment in form of radiotherapy et cetera. It is submitted that the petitioner has been advised not to take the stress of work or travel. It is submitted that accordingly, the petitioner cannot

undertake the long-distance travel entailed in the present case, as distance between Gurdaspur to Ludhiana is 165 kms. (one side).

3. Learned counsel for respondent No.1 submits that father of the petitioner is practicing advocate in Ludhiana and therefore, the petitioner is apprehending danger at the hands of the petitioner and his family members at Ludhiana. Further submitted that a compromise has already been effected between the parties on 21.06.2019, and the petitioner has filed the present petition only to embroil the respondent in further litigations. It is also stated that the following cases are also pending between the parties at Gurdaspur:-

- a. Petition under Section 13 of Hindu Marriage Act,
- b. Civil Suit 34 of 2020 titled as 'Kiran vs Rupinder Singh and another'
- c. Complaint no. 6790/10/2019 pending before WomenCell, Gurdaspur was disposed off in terms of compromise.
- d. Case pending before Hon'ble Punjab State Human Rights Commission Chandigarh dated 30.09.2019 duly contested by both parties (Annexure R-4).

4. I have heard learned counsel for the parties, and gone through the record with their able assistance.

5. In my view, in the above-noticed facts and circumstances of the present case, where the health condition of the petitioner has not been denied by the respondent-wife, it is most just and proper that the present transfer petition be allowed. No doubt, the preponderance of law in such-like cases is in favour of the wife. However, it is not the case that transfer is always allowed in favour of the wife. The Hon'ble Supreme Court, as well as this Court have refused relief to the wife. One such case which may be referred to is: **(2006) 9 SCC 197 'Anindita Das Vs. Srijit Das'** wherein Hon'ble Supreme Court had dismissed the wife's application

seeking transfer of petition filed by the husband. Reference in this regard may also be made to two cases of this Court where, this Court had dismissed transfer applications filed on behalf of the wife. These are: **TA no. 126 of 2018 Smt. Akhwinder Kaur Vs. Sh. Gurpreet Singh**; and **TA No. 299 of 2019 Nisha alias Manisha vs. Amarveer Yadav**.

6. Thus, in the exceptional circumstances of the present case, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

- a) Civil Suit No.973 of 2019 filed by respondent No.1-wife pending in the Court of Civil Judge, Junior Division, Gurdaspur is transferred to a court of competent jurisdiction at Ludhiana.
- b) The Id. District Judge, Gurdaspur is directed to transfer complete record pertaining to the aforesaid case to District Judge, Ludhiana.
- c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Ludhiana on 24.02.2023.
- d) The District Judge, Ludhiana will assign the said petition to the Court of competent jurisdiction.

7. The concerned Court at Ludhiana will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.

8. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

Allowed as above.

31.01.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)

Judge