

(2011) 02 P&H CK 0331

High Court Of Punjab And Haryana At Chandigarh

Case No: TA No. 577 of 2010

Suman

APPELLANT

Vs

Naresh Kumar

RESPONDENT

Date of Decision: Feb. 22, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24
- Hindu Marriage Act, 1955 - Section 13(1), 9

Hon'ble Judges: Jitendra Chauhan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Jitendra Chauhan, J.

The present application has been preferred by the applicant/wife u/s 24 of the CPC for transfer of petition titled "Naresh v. Suman" u/s 13(1) of Hindu Marriage Act, 1955 (for short "the Act") from the Court of learned District Judge-cum-Family Court, Gurgaon to the court of competent jurisdiction at Family Court/District Judge, Narnaul.

2. Learned Counsel for the applicant submits that the applicant is a resident of Narnaul. She has no source of income and is residing at the mercy of her parents alongwith her minor child. He has further submitted that petition u/s 9 of the Act filed by the applicant is pending adjudication before the court at Narnaul.

3. It has further been submitted that the distance between Narnaul to Gurgaon is more than 100 kms and in the fact situation, it is not possible for the applicant, being a lady, to attend the court proceedings at Gurgaon.

4. On the other hand, learned Counsel for the Respondent has vehemently opposed the prayer of the applicant.

5. I have heard the learned Counsel for the parties.

6. Admittedly, the petition u/s 9 of the Act is pending at Narnaul. The applicant has no source of income and is residing at the mercy of her parents, who are poor people. There is no other male member in the family to accompany the applicant to attend the court proceedings at Gurgaon. The applicant is having a minor child. Moreover, the distance between Narnaul to Gurgaon is more than 100 kms.

7. In the circumstances, it would certainly be not convenient for the applicant to undertake frequent trips alongwith her minor child from Narnaul to Gurgaon. In a dispute between the husband and the wife, normally the wife is at the receiving end. The balance of convenience is in favour of the applicant and against the Respondent.

8. It is well settled principle of law that convenience of the wife is to be seen in such like matters as has been held in cases of Sumitra Singh v. Kumar Sanjay and Anr. AIR 2002 SC 396 and Neelam Kanwar v. Devinder Singh Kanwar 2001(1) M.L.J. 509 (SC).

9. In Neelam Kanwar's case (supra), Hon"ble the Supreme Court has observed as under:

We are mindful of the fact that the Petitioner is a lady and first Respondent is a male, and, therefore, (for) convenience of wife, a transfer to the place where the lady is residing, would be preferred by this Court unless, it is shown that there are special reason not to do so. No special reason is shown.

10. Considering the facts that petition filed by the applicant is pending at Narnaul; she, being without resources, would not be able to defend her case at Gurgaon; and primarily the convenience of the wife is to be seen, in my opinion, the present application deserves to be allowed.

11. In view of the above, the application is allowed. The petition filed by the Respondent titled `Naresh v. Suman" u/s 13(1) of the Act is withdrawn from the court of learned District Judge-cum-Family Court, Gurgaon and is transferred to the court of competent jurisdiction at Narnaul. File shall be sent by the Family Court at Gurgaon to the learned District Judge, Narnaul within two weeks from the date of receipt of a certified copy of this order. The learned District Judge, Narnaul will either himself dispose it of or entrust it to any other Court of competent jurisdiction.

12. Parties are directed to appear before the District Judge, Narnaul, on 22.3.2011.