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

Sr. No.105

**TA-1631-2023
Date of Decision: 05.08.2025**

SANJANA

....Applicant

Versus

AKHIL SEHGAL

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Vikram Rana, Advocate
for the applicant.

Mr. Abhimanyu Kalsy, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the petition under Section 11 of the Hindu Marriage Act i.e. HMA/2924/2023, titled '*Akhil Sehgal Vs. Sanjana*', filed by the respondent-husband, pending in the Family Court, Ludhiana and she seeks transfer of the same to the Court of competent jurisdiction at Kurukshetra.

Upon notice issued, the respondent made appearance through counsel and filed reply.



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Counsel for the parties heard.

At the very outset, it is submitted by the counsel for the respondent that the marriage between the parties to the lis, had taken place on 21.05.2023. However, due to matrimonial dispute, the parties are residing separate. The applicant had filed the petition under Section 12 of the Protection of Women from Domestic Violence Act, as well as the petition under Section 125 Cr.P.C., which are pending in the Courts at Kurukshetra and the respondent is pursuing the said litigation. Furthermore, it is submitted that in the transfer applications, preference ought to be given to convenience of the wife. Also, the applicant is stated to be not having any source of earning and in the given circumstances, it is submitted that it is difficult for her to commute a distance of about 375 kilometres, to defend the petition under Section 11 of the Hindu Marriage, filed by the respondent.

On the other hand, the counsel for the respondent, while making reference to the reply, has assiduously contended that there is concealment of the material facts, at the behest of the applicant and this conduct itself, is sufficient reason to deny the relief, as sought for by way of present application. Though, the date of marriage of the applicant with the respondent is not disputed, but however, the counsel for the respondent contends that prior to performance of marriage with the respondent, the applicant was married with one Nikhil Kumar @ Nikhil Sharma, on 15.02.2021 and she had not disclosed the fact about her earlier marriage, in the transfer application. After performance of marriage with Nikhil Kumar



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@ Nikhil Sharma, the applicant together with him, had filed a protection petition before learned Sessions Judge, Kurukshetra and the same was dismissed as withdrawn. While playing fraud with the respondent, the applicant had performed the second marriage with him, without disclosing about her previous marriage. Not only this, also the counsel submits that Nikhil Kumar @ Nikhil Sharma, had then filed a petition under Section 11/12 of the Hindu Marriage Act, in which the proceedings were conducted. However, no cross-examination was conducted at the behest of the applicant, which in itself reveals about there to be collusion between the applicant and Nikhil Kumar @ Nikhil Sharma. However, the requisite marriage of the applicant with Nikhil Kumar @ Nikhil Sharma, was declared as nullity, vide order dated 25.11.2024. In the light of the same, it is contended that the applicant had concealed the material facts and as such, has committed fraud, not only with the applicant, but also with the Court. As such, filing of transfer application is a gross abuse of the process of law.

No doubt, as submitted by the counsel for the applicant that generally, the Courts give weightage to the convenience of wife, in case of transfer application relating to the matrimonial dispute, but however, this is not a thumb rule. Various other circumstances, spelt out from the material coming forth, ought to be taken into consideration. The power to transfer the cases, as provided under Section 24 of the CPC, is discretionary, which has to be exercised, to meet the ends of justice. No doubt, the convenience has to be considered. However, this aspect has to appraised in the



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background of the peculiar facts of each case and it has to be examined, considered and appreciated, before applying the codified or judgemade law thereto, with regard to consideration of the convenience of the wife, while dealing with the transfer application relating to the matrimonial dispute.

Circumstantial flexibility, one additional or different fact, may make a world of difference in the conclusion between the two cases. Considering the same, each case depends upon its own facts and close similarity between one case and the another, is not enough, as single significant detail may alter the entire aspect in deciding such cases. However, it is a well-settled that the litigant, who comes to the Court, is expected and desired to disclose all the material facts, which have bearing on the decision of the transfer application.

However, in the case in hand, definitely there is concealment of the material facts in the transfer application, at the behest of the applicant. She had not made a mention of her previous marriage and had only stated about the marriage having performed with the respondent, on 21.05.2023. No doubt, keeping in view the facts and circumstances of any case, the disclosure of first marriage may not be important, but however, in the case in hand, non-disclosure of the first marriage is all the more important to note, as the litigation was going on between the applicant and her first husband, Nikhil Kumar @ Nikhil Sharma, with whom she had performed marriage. Along with the reply, various documents have been annexed by the respondent, thereby showing about performance of marriage of the applicant with Nikhil Kumar @ Nikhil Sharma, on 15.02.2021. Photocopies of



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photographs of the marriage rituals have also been annexed with the reply. After performance of their marriage, both of them have filed the protection petition before learned Sessions Judge, Kurukshetra, which was dismissed as withdrawn. However, the petition under Section 11/12 of the Hindu Marriage Act, was filed by Nikhil Kumar @ Nikhil Sharma, against the applicant on 03.04.2024 i.e. after performance of second marriage by the applicant, with the present respondent. It is thus evident that it was during the subsistence of first marriage, the applicant had performed second marriage with the respondent. The said petition under Section 11/12 of the Hindu Marriage Act, was decided on 25.11.2024 and copy of the said order is annexed with the reply as Annexure R-6. Perusal of the same reveals that though, Nikhil Kumar @ Nikhil Sharma, had himself stepped into the witnessbox as PW-1 and tendered his affidavit, into evidence as Ex.PW-1/A, but however, he was not cross-examined by the counsel for the applicant. Not only this, while advancing the arguments also, the counsel for the present applicant (who was respondent in the petition filed by Nikhil Kumar @ Nikhil Sharma), had stated that he has no objection in allowing the petition of the petitioner, as the said marriage was just entered into documents and the parties never lived together, as a married couple at any point of time and the essential ceremonies were not performed. Such being the conduct of the applicant in pursuing the petition under Section 11/12 of the Hindu Marriage Act, the respondent has concluded about there to be



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collusion between the applicant and her first husband, Nikhil Kumar @ Nikhil Sharma.

The aforesaid factual position with regard to subsistence of first marriage and non-disclosure of the same to the respondent, as asserted, as well as, the petition under Section 11/12 of the Hindu Marriage Act, filed by Nikhil Kumar @ Nikhil Sharma, not pursued by the applicant, reveals about some malafide intention being there, *vis-a-vis*, the status of the first marriage, as well as remarriage performed with the applicant. Such factual position having not been disclosed, amounts to concealment on the part of the applicant and this obviously being a material fact to be disclosed, amounts to fraud on the applicant, as well as the Court. Considering this conduct of the applicant, when there is a malafide intention working behind the mind, this Court cannot facilitate to the convenience of the applicant, in pursuing the matrimonial litigation.

Consequently, the present transfer application is hereby dismissed.

05.08.2025
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No