



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3041 of 2025(O&M)
Reserved on: 23.05.2025
Date of Order:29.05.2025

Sukhdeep Kaur

.Petitioner

Versus

Avtar Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Gagandeep Kaur, Advocate
for the petitioner.

Mr. Karambir Singh Randhawa, Advocate
for respondent no.1.

ANIL KSHETARPAL, JUDGE (Oral)

I. BRIEF FACTS OF THE CASE

1.1 The petitioner herein is the wife of respondent no.1(Avtar Singh). She challenges the correctness of the order passed on 11.04.2025, by the Principal Judge, Family Court refusing to implement the District Judge's order passed on 21.03.2025, while transferring petition-HMA-540/2022, from his Court to the Family Camp Court, at Dhuri.

1.2 The Principal Judge after interpreting Sections 4, 7 and 8 of the Family Courts Act, 1984 (hereinafter referred to as 'the 1984 Act') has held that the District Judge has no jurisdiction to transfer the petition pending before the Family Court and only the Principal Judge, Family Court has exclusive jurisdiction to distribute or transfer the cases from one family court to another.

1.3 For better comprehension, Sections 4, 7, 8 and 10 of the 1984



Act, reads as under:-

4. Appointment of Judges.—

(1) *The State Government may, with the concurrence of the High Court, appoint one or more persons to be the Judge or Judges of a Family Court.*

(2) *When a Family Court consists of more than one Judge,—*

(a) each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;

(b) the State Government may, with the concurrence of the High Court, appoint any of the Judges to be the Principal Judge and any other Judge to be the Additional Principal Judge;

(c) the Principal Judge may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various Judges thereof;

(d) the Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness or any other cause.

(3) *A person shall not be qualified for appointment as a Judge unless he—*

(a) has for at least seven years held a judicial office in India or the office of a Member of a Tribunal or any post under the Union or a State requiring special knowledge of law; or (b) has for at least seven years been an advocate of a High Court or of two or more such Courts in succession; or

(c) possesses such other qualifications as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.

4 (4) *In selecting persons for appointment as Judges,—*

(a) every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counselling are selected; and

(b) preference shall be given to women.

(5) *No person shall be appointed as, or hold the office of, a Judge of a Family Court after he has attained the age of sixty-two years.*

(6) *The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, a Judge shall be such as the State Government may, in*



consultation with the High Court, prescribe.

7. Jurisdiction.—(1) *Subject to the other provisions of this Act, a Family Court shall—*

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.—*The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—*

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) *Subject to the other provisions of this Act, a Family Court shall also have and exercise—*

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

8. Exclusion of jurisdiction and pending proceedings.—*Where a Family Court has been established for any area,*

(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to



in the Explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),—

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.

10. Procedure generally.—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.”

1.4 The respondent filed petition u/s 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the 1955 Act'), for dissolution of marriage by a decree of divorce in the court of the Principal Judge, Family Court, Sangrur. On the other hand, the petitioner filed an application under



Sections 12, 18, 19, 20, 22 etc. of the Protection of Women from Domestic Violence Act, 2005, which is pending in the Court of Judicial Magistrate Ist Class, Dhuri, which is also a part of Sangrur District. There is a Family Camp Court, at Dhuri. She filed an application seeking transfer of proceedings from the court of Principal Judge, Family Court, Sangrur, to Family Camp Court, at Dhuri, which was allowed on 21.03.2025. However, when this order was brought to the notice of the learned Principal Judge, Family Court, he refused to obey the same citing the reason that the District Judge lacks jurisdiction and is not competent to transfer cases from one Family Court to other Family Court.

2. **ARGUMENTS ADDRESSED:-**

2.1 This bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

2.2 The learned counsel representing the petitioner while referring to Section 10 of the 1984 Act, submits that provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') shall apply to the proceedings before the Family Court in all the cases where the 1984 Act is silent. Hence, the word 'District Court' used in Section 24 of the CPC signifies that the power to transfer proceedings of any suit, appeal or other proceedings vest in District Judge and it does not mean the Principal Judge.

2.3 Per contra, the learned counsel representing the respondent does not dispute the aforesaid position, however, submits that the decision of the divorce petition has been delayed by the petitioner-wife while resorting to various proceedings. He submits that he has no objection if the proceedings of petition under Section 13 of the 1955 Act, are held that Family Camp



Court, at Dhuri.

3. **ANALYSIS AND DISCUSSION:-**

3.1 This court has considered the submissions of the learned counsel representing the parties.

3.2 Section 3(17) of the General Clauses Act, 1897, defines the expression 'District Judge', which reads as under:-

“District Judge” shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.”

3.3 The aforementioned provision clearly describes that the District Judge is a Judge of the Principal Civil Court of original jurisdiction of the district.

3.4 For better content, Section 24 of the CPC reads as under:-

24. General power of transfer and withdrawal .-

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point



at which it was transferred or withdrawn.

(3)[For the purposes of this section,-

(a)Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b)"proceeding" includes a proceeding for the execution of a decree or order.]

(4)The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5)[A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]

[Inserted by the Code of Civil Procedure (Amendment) Act, 1976, Section 10 (w.e.f. 1.2.1977).]”

3.5. Section 20 of Punjab Courts Act, 1918 (hereinafter referred to as 'the 1918 Act'), defines the expression “District Judge”, whereas Section 24 provides that District Judge shall be the Principal Civil Court of original jurisdiction. The expression “District Court” in the context of Section 24 has always been understood and accepted as the court of a “District Judge”, who is considered a superior in the hierarchy of the Principal Civil Court of original jurisdiction.

3.6 It is evident that not only the High Court but the District Judge has the enabling power to transfer any suit, appeal or other proceedings pending before trial court or any other court which is subordinate to District Court by virtue of Section 24 of the CPC. Section 24(3) clarifies that for the purpose of this Section, the courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

3.7 Attention of this court has not been drawn to any specific provision in the '1984 Act' regulating transfer of cases from one Family Court to another within the district or outside district within the State. Section 4(2)(c) of the 1984 Act lays down a provision with respect to the distribution of business amongst the various judges by the Principal Judge.



Hence, Section 24 of the CPC will be applicable particularly when Section 10 of the '1984 Act' provides for the applicability of the provisions of the CPC subject to another provisions of this Act and the rules. In other words, wherever the provisions of the '1984 Act' are silent, the proceedings in the Family Court will be governed by the CPC. Similarly, attention of the court has also not been drawn to any specific provision excluding applicability of Section 24 CPC to the proceedings before the Family Court constituted under the special statute i.e. 'the 1984 Act'.

3.8 There are three Presiding Officers in the Family Court, at Sangrur. As mentioned earlier, Clause (c) of Section 4(2) of the 1984 Act, enables the Principal Judge to distribute the business of the court amongst the various Judges posted in the Family Courts in a particular district. However, it does not confer judicial power of transfer as is conferred under Section 24 CPC. The enabling power of the Family Court under Section 4 read with Section 7 of the 1984 Act is restricted to distribution of work i.e. when the petitions are filed at the initial stage or subsequently as and when required for administrative reasons. It is essentially an administrative power. In the considered opinion of this court, the word 'distribution' used in Section 4(2)(c) of the 1984 Act cannot be interpreted to include the word 'transfer' in it. The section does not give the word 'distribution' such wider connotation. Even the dictionary meaning of word 'distribution' signifies the action of sharing something out among a number of recipients. Hence, the usage of the word in the Section is plain and simple and shall be construed as such. However, the enabling power of District Court/District Judge under Section 24 of the 1918 Act is a judicial exercise of discretion which does



not vest in the Principal Judge of the Family Court.

3.9 The enabling power of the Principal Judge of the Family Court under Section 7 of 'the 1984 Act' is restricted by the Explanation which does not include the judicial power of transferring of the cases pending in one Family court to another. Moreover, if the interpretation as propounded in the impugned order is accepted, then for transferring the cases pending before the Principal Judge of the Family Court, the only available remedy will be to file a petition before the High Court which may not be advisable.

3.10 Similarly Section 8(a) of 'the 1984 Act' excludes the jurisdiction of the District Court only with respect to matters which fall within the scope of explanation to Section 7(1) of 'the 1984 Act'. Thus, Section 8(a) also does not confer any jurisdiction on the Principal Judge of the Family Court to transfer the proceedings.

3.11. However, wherever the Principal Judge of the Family Court is of the rank of a District Judge, who is not subordinate to the District & Sessions Judge of the district, the application seeking transfer of case from one court to another shall be required to be filed in the High Court. However, in the States of Punjab, Haryana and UT, Chandigarh, the majority of Presiding Judge of the Family Court are in the rank of Additional District Judge.

3.12. As per the constitutional scheme and ethos, there is hierarchy of courts which is meant to be followed. The general power of transfer and withdrawal conferred on the High Court or the District Court has not been conferred on the Principal Family Judge even if there are more than one Judges posted in the Family Court in a particular district.



3.13. Moreover, while interpreting the statutory provisions, the Court is required to harmoniously interpret the provisions to achieve the object with which such provisions were made. In cases, where there is inter-play between two or more statutes, the court is required to take a holistic view.

3.14. Even though the Family Courts Act is a special statute, whereas the Code of Civil Procedure, 1908, is a general law, however, rule of harmonious and meaningful construction should be the goal while interpreting the provisions of the statute. In absence of a specific provision that regulates and confers the judicial power to transfer of cases from one Family Court to another in the 1984 Act, the statute containing general procedure shall be applicable as provided by Section 10 of the 1984 Act. The 1984 Act, while being a special statute is aimed at the effective adjudication of family disputes. However, it is notably silent on the issue of transfer of cases between the courts. In such absence, the general provision under Section 24 of CPC, assumes significance.

IV. DECISION:-

4.1. Keeping in view the aforesaid facts and discussion, the impugned order dated 11.04.2025, passed by the Principal Judge, Family Court, Sangrur, is set aside.

4.2. The revision petition is allowed.

4.3. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

29th May, 2025

nt

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No