

TA No. 579 of 2016

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**

**TA No. 579 of 2016
Date of decision: 22.2.2017**

Amandeep Kaur

...Applicant

Versus

Rajpal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. V.S.Mahal, Advocate
for the applicant.

Mr. Parminder Singh, Advocate
for the respondents.

Mr. Sarvpreet S.Gurna, as Amicus Curiae.

RAMESHWAR SINGH MALIK, J. (Oral)

Applicant, by way of instant transfer application under Section 24 of the Code of Civil Procedure (for short 'CPC'), seeks transfer of the petition under Section 25 of the Guardian and Wards Act, 1980, ('the Act' for short) titled as Rajpal Singh and another Vs. Amandeep Kaur, filed by respondents- parents-in-law of the applicant, from Karnal to Patiala.

Notice of motion was issued and learned trial court was directed to adjourn the case beyond the date fixed before this Court.

Heard learned counsel for the parties.

It has gone undisputed before this Court that respondents, who are grand-parents of the child, have filed a petition for custody of the child at Karnal. Applicant is living in Patiala. Distance between Patiala and Karnal

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is about 130 Kms.

After giving anxious consideration to the contentions raised and careful perusal of the record of the case, this Court is of the considered opinion that instant one has been found to be a fit case for ordering the transfer of petition under Section 25 of the Act from Karnal to Patiala. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicant and against the respondents. In the circumstances of the case, it will not only be inconvenient but would be very difficult for the applicant to go from Patiala to Karnal, to pursue the litigation imposed on her by the respondents.

The view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court: -

1. Mrs. Maneka Sanjay Gandhi and another Vs. Miss Rani Jethmalani, AIR 1979 (SC) 468.

2. Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4.

3. Neelam Kanwar Vs. Devinder Singh Kanwar, 2000 (10) SCC 589.

4. Sumita Singh Vs. Kumar Sanjay and another, AIR 2002 (SC) 396.

5. Mangla Patil Kale Vs. Sanjeev Kumar Kale, 2003 (10) SCC 280.

6. Fatema Vs. Jafri Syed Husain @ Syed Parvez Jafferi, AIR 2009 (SC) 1773.

7. Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani, AIR 2009 (SC) 1374.

8. Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others, AIR 2008 SC 1333.

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9. Nisha Vs. Dharmenda Pratap Singh Rathore, 2015 (3) All. LJ 168.

10. M.V. Rekha Vs. Sathya, 2011 (2) HLR 34.

11. Sneha Vs. Vinayak, 2013 ILR (Karnataka) 165.

12. Rimpal Vs. Balinder Kumar, 2010 (7) RCR (Civil) 286.

13. Anju Vs. Sanjay, 2011 (6) RCR (Civil) 112.

14. Komal Devi @ Komal Kumari @ Komal Rani Vs. Harbhajan Singh, 2012 (8) RCR (Civil) 84.

The relevant observations made by the Hon'ble Supreme Court in **Dr. Subramaniam Swamy** (supra), which can be gainfully followed in the present case, read as under: -

“The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has, therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude- for the ends of justice- have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of

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all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone.

(emphasis supplied)”

Reverting to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as different High Courts, including this Court, it is unhesitatingly held that applicant is entitled for getting the petition under Section 25 of the Act transferred from Karnal to Patiala, so as to enable her to pursue the litigation without facing any undue hardship or harassment at the hands of the respondents. It is the settled principle of law that justice is not only to be done but it should also appear to have been done. If the applicant is forced to go from Patiala to Karnal, it would amount to denial of justice to her. Thus, to strike a balance between the parties with a view to do complete and substantial justice and proceeding on a holistic view of the matter, this Court is of the considered view that it would be just and expedient to transfer the petition under Section 25 of the Act from Karnal to Patiala.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant transfer application deserves to be accepted and the same is hereby allowed. Petition under Section 25 of the HM Act filed by the respondent is ordered to be transferred from Karnal to Patiala.

Accordingly, the learned District Judge, Karnal, is directed to

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send complete record of the above-said petition to the learned District Judge, Patiala, at an early date but in any case within a period of one month from the date of receipt of certified copy of this order.

The learned District Judge, Patiala, is also directed either to decide the case himself or assign it to the learned court of competent jurisdiction, for an early decision, in accordance with law.

With the above-said observations made and directions issued, present transfer application stands disposed of, however, with no order as to costs.

22.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No