

TA No. 694 of 2016

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

TA No. 694 of 2016

Date of decision: 16.2.2017

Hemat Masih and another

...Applicants

Versus

Amit Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rohit Kumar, Advocate
for the applicants.

None for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Applicants, by way of instant transfer application under Section 24 of the Code of Civil Procedure (for short 'CPC'), seek transfer of the petition under Section 25 of the Guardian and Wards Act, ('the Act' for short) titled as Amit Kumar Vs. Hemat Masih and another, filed by respondent from Ferozepur to Bathinda.

Notice of motion was issued and learned trial court was directed to adjourn the case beyond the date fixed before this Court. Having been served, respondent was being represented by learned counsel, as it is clear from orders dated 27.10.2016 ad 21.11.2016. However, neither any reply has been filed, nor anybody has come present on behalf of the respondent to oppose the present transfer application.

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Heard learned counsel for the applicants.

It has gone undisputed before this Court that minor child, aged about six years, is living with the applicants. Respondent, who is father of the minor child, has filed a petition for his custody at Ferozepur, impleading grand maternal parents of the minor, who are residing at Bathinda. Distance between Ferozepur and Bathinda is about 100 Kms. Other litigations between the parties, at the instance of the applicants, are also pending at Bathinda.

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 Ferozepur to Bathinda. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicants and against the respondent. In the circumstances of the case, it will not only be inconvenient but would be very difficult for the applicants to go from Bathinda to Ferozepur, to pursue the litigation imposed on them by the respondent.

The cardinal principle for exercise of power under Section 24 of the Civil Procedure Code is that the ends of justice demand the transfer of the suit, appeal or other proceeding. Wherever the Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and behavioural pattern, their standard of life antecedent to marriage and subsequent thereto and circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life.

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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.***
- 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

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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 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 applicants are entitled for getting the petition under Section 25 of the Act transferred from Ferozepur to Bathinda, so as to enable them to pursue the litigation without facing any undue hardship or harassment at the hands of the respondent. 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 applicants are forced to go from Bathinda to Ferozepur, it would amount to denial of justice to them. Thus, striking 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 Ferozepur to Bathinda.

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 Act filed by the respondent is ordered to be transferred from Ferozepur to Bathinda.

Accordingly, the learned District Judge, Ferozepur, is directed to send complete record of the abovesaid petition to the learned District Judge, Bathinda, 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.

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The learned District Judge, Bathinda, is directed to assign the case 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.

16.2.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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