

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

TA No. 699 of 2018(O&M)

Date of decision:13.08.2018

Rekha	vs.	.. Petitioner
Navdeep Sharma		.. Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Naresh Kumar Manchanda, Advocate
for the petitioner.

Harinder Singh Sidhu, J.

The present transfer application has been filed under Order 24 of the Code of Civil Procedure for transfer of petition, titled as “Rekha vs. Navdeep Sharma” filed by the petitioner under Sections 8 & 10 of the Guardian and Wards Act, which is pending before learned District Judge (Family Court), Moga to a Court of competent jurisdiction at Barnala.

In the petition, the petitioner is seeking guardianship and custody of her six years old son. Vide order dated 11.07.2017, learned District Judge (Family Court), Moga had opined that the Court has no territorial jurisdiction to entertain and try the petition as the child was ordinarily residing at Barnala. The petition was ordered to be returned to the petitioner, to be presented before the appropriate Court having territorial jurisdiction within 30 days.

The petitioner assailed the aforesaid order by filing FAO-5608-2017 titled as 'Rekha vs. Navdeep Sharma', which was decided by a Division Bench of this Court on 21.05.2018, wherein it was noticed that the petition appeared to have returned at the stage when both the parties had produced their respective evidence after framing of issues. It was also noticed that no preliminary issue regarding jurisdiction had been framed. It was also held that the issue of jurisdiction was a mixed question of law

and fact which was to be determined on appreciation of evidence. It was also held that the order of returning of petition at the final stage of the arguments was apparently improper. Accordingly, the appeal was allowed. The order for returning petition was set aside. The trial Court was directed to determine the territorial jurisdiction after giving fair opportunity to both the parties. It was further directed that the case be finally decided within a period of three months after 21.07.2018.

Now the present transfer petition has been filed by the petitioner seeking transfer of the case from the Court of learned District Judge (Family Court), Moga to any other Court of competent jurisdiction at Barnala. The only ground urged by learned counsel for the petitioner is that as the learned District Judge (Family Court), Moga had earlier opined that the Court at Moga had no territorial jurisdiction to entertain and try the petition, it is likely that the Court may again pass the same order. If the same order is passed and the case once again returned to the petitioner to file it before a Court of competent jurisdiction, the petitioner would be prejudiced. The petitioner has already been agitating for guardianship of her child from the year 2013.

The contention advanced by learned counsel for the petitioner cannot be accepted to direct transfer the petition. The learned lower Court had earlier opined that it had no territorial jurisdiction to entertain and try the petition and it was ordered to be returned to the petitioner to be presented before the appropriate Court. The petitioner assailed that order, which was set aside by a Division Bench of this Court in FAO No. 5608-2017 and the learned District Judge, Moga was directed to decide the issue afresh after giving fair opportunity to both the parties.

The Court is now to decide the issue of jurisdiction afresh in the light of the direction of this Court in FAO No. 5608 of 2017 filed by the petitioner.

The petitioner cannot seek transfer from the learned District Judge (Family Court), Moga on a pre-supposition of its outcome.

Dismissed.

13.08.2018
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(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No