

TA No.433 of 2019 (O&M)

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

Sr. No.257

**TA No.433 of 2019 (O&M)
DECIDED ON: October 30, 2019**

NISHI MEHTA

..APPLICANT

VERSUS

SANJIV KUMAR MEHTA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE H. S. MADAAN

Present: Mr. Ajay Pal Singh Rehan, Advocate, for the applicant.

Mr. Shashank Sharma, Advocate, for the respondent.

H.S. MADAAN, J. (ORAL)

This application for transfer of petition under Section 25 of the Guardian and Wards Act read with Section 6 of the Hindu Minority and Guardianship Act filed by the respondent-Sanjiv Kumar Mehta, titled 'Sanjiv Kumar Mehta Vs. Nishi Mehta' pending before learned Principal Judge, Family Court at Patiala, to the Court of competent jurisdiction at Mukerian, District Hoshiarpur, Punjab, has been filed by applicant – Nishi Mehta aged about 39 years, estranged wife of Sanjiv Kumar Mehta, who is respondent in the present application, presently residing with her parents at Talwara, Tehsil Mukerian, District Hoshiarpur, on account of matrimonial discord between the parties.

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According to the applicant, the marriage solemnized between the parties on 07.12.2008, did not prove to be successful. The applicant is having custody of two minor children of the parties namely Arshiya Mehta, born on 31.10.2009 and Akshaj Mehta, born on 24.05.2017. The respondent has filed a petition seeking the custody of minor children of the parties i.e. a daughter namely Arshiya Mehta and a son namely Akshaj Mehta, which is pending before learned Principal Judge, Family Court, Patiala. According to the applicant, it is difficult for her to travel from her parental place i.e. Talwara, Tehsil Mukerian District Hoshiarpur to Patiala covering a distance of 225 kms on one side so as to attend the dates of hearing in the Court there, therefore, the application be accepted.

Notice of the application was given to the respondent, who has put in appearance through counsel and by way of filing a written reply is vehemently opposing the application. It is stated that no ground for transfer of the case is made out. Furthermore, for the reason that the applicant is working and is financially sound and the respondent has got old age parents to look after, therefore, application be dismissed.

I have heard learned counsel for the parties, besides going through the record.

The Apex Court in various judgments has observed that in matrimonial disputes between the spouses convenience of wife should be looked into. In that regard a reference can be made to authority **Sumita Singh Versus Kumar Sanjay and another, 2002 AIR(SC) 396** by a Division Bench of Hon'ble Supreme Court.

In **Bhartiben Ravibhai Rav Versus Ravibhai Govindbhai Rav, 2017(3) RCR(Civil) 369**, the Apex Court had allowed application for

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transfer of the divorce petition to a place where the wife was residing considering various factors including the distance between the place where the wife was residing and the place of sitting of the Court where divorce petition had been instituted and the fact that the wife had filed two cases against her husband in the Court at the place of her residence wherein the respondent had already put in appearance.

In *Apurva Versus Navtej Singh, 2017(2) Law Herald 966* by a Co-ordinate Bench of this Court, it was observed that wherever the Courts are called upon to consider the plea of transfer in matrimonial disputes, the Courts have to take into consideration various factors like economic soundness of either of the parties, the social strata of the spouses to which they belong and behavioural pattern, standard of life antecedents of marriage. Generally it is the wife's convenience, which must be looked at by the Courts while deciding the transfer application.

In addition to the circumstances, mentioned in the application, only the Court having jurisdiction over the place where the minor resides has got jurisdiction to entertain the either petition.

Earlier on an application having been filed by the applicant, the same was accepted by this Court and the divorce petition filed by the respondent-husband against the applicant had been transferred to the Family Court at Hoshiarpur.

Keeping in view the contentions in the application and submissions made by learned counsel for the applicant, I find that ends of justice demand that the application be allowed.

Accordingly, the application is accepted. The petition in question is ordered to be withdrawn from the Court of Principal Judge,

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Family Court at Patiala and transferred to the Family Court at Hoshiarpur, for disposal in accordance with law. The transferee Court may take up the case at Mukerian if Court is held there.

Parties through counsel are directed to appear in the transferee Court on 29.11.2019.

A copy of the order be sent to the Courts concerned, for information and necessary compliance.

October 30, 2019

Ankur

(H.S. MADAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No