

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

TA-734-2018 (O&M)
Date of decision: 27.03.2019

Rajni Bhatia @ Rajni Diwan

...Applicant

Versus

Nitin Diwan

...Respondent

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

Present: Ms. Benti Kaur, Advocate for
Mr. Kawaljyot Singh, Advocate for the applicant.

Mr. Vivek Sharma Vashisht, Advocate for the respondent.

H.S. MADAAN, J. (Oral)

By way of moving the present application, applicant Rajni Bhatia @ Rajni Diwan wife of respondent Nitin Diwan, seeks transfer of petition under Section 7 & 8 of the Guardians and Wards Act, 1890, filed by her husband, the respondent against her having title 'Nitin Diwan Vs. Rajni Bhatia @ Rajni Diwan' pending in the Court of Guardian Judge, Ludhiana to the Court of competent jurisdiction at Jalandhar.

According to the applicant, she was married with the respondent, however, the marriage ran into rough weather. The couple was blessed with a son, namely, Master Tanmay Diwan, presently aged about 03 years. The applicant was maltreated by the respondent/husband and was compelled to leave the matrimonial home, however the later retained custody of the minor son. According to the applicant, keeping in view the tender age of the child, he requires care and protection of his

mother, the applicant. The respondent has filed the petition in question with respect to the custody and guardianship of minor son of the parties. According to her, she being a young woman, having no source of income, it is difficult for her to travel from Jalandhar to Ludhiana, to attend the dates of hearing in the Court there, covering a distance of about 70 kms on one side. Therefore, the present application be accepted.

Notice of the application was given to the respondent, who has put in appearance and is contesting the application vehemently, praying for its dismissal, contending that the applicant herself had left the minor child in the matrimonial home while going to her parental house and no ground is there to transfer the petition in question. Therefore, the application be dismissed.

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

Learned counsel for the applicant in support of her contentions has referred to judgment by a Co-ordinate Bench of this Court delivered in CR-7257-2018 on 02.11.2018, in case titled **Tejbir Singh Vs. Baljit Kaur**, to the effect that the custody of a minor child would naturally lie with the mother and therefore, the deemed custody would be with mother, even if, actual custody is with the father. Whereas, learned counsel for the respondent has relied upon judgment titled **Tarun Bansal @ Sonny Vs. Neelam Rani**, 2015(1) PLJ 696, by another Bench of this Court, observing that as per Section 9(1) of Guardians and Wards Act, 1890, petition for guardianship of minor child could be filed in

Court having jurisdiction over the area where the minor ordinarily resides.

After hearing the rival contentions and going through the authorities referred to by learned counsel for the parties, I find that no doubt the competent Court having jurisdiction over the area where the minor actually resides has got the jurisdiction but other facts and circumstances are also to be taken into consideration. According to the applicant, she does not have any source of income. It is difficult for her to travel from Jalandhar to Ludhiana to attend the dates of hearing in the Court there.

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 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.

Keeping in view the contentions in the application and submissions made by learned counsel for the applicant, in which I find merit, in absence of any strong circumstance to the contrary, it would be proper and appropriate, if the application is accepted. The same is accordingly allowed. The petition in question is ordered to be withdrawn from the Court of Guardian Judge, Ludhiana and transferred to Family Court at Jalandhar for disposal in accordance with law.

The parties through their counsel are directed to appear in the transferee Court on 25.04.2019. Copies of orders be sent to both the Courts for information and necessary compliance.

27.03.2019

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**(H.S. MADAAN)
JUDGE**

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