

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

TA-539-2020

Date of Decision: November 18, 2020

NARPINDER KAUR AND OTHERS

..... PETITIONER(s)

Versus

ASHWANI KUMAR

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. H.S. Bedi, Advocate
for the petitioners.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

The petitioners seek transfer of the petition under the Guardian and Wards Act, filed by the respondent (Annexure P-4) as well as petition under Section 9 of Hindu Marriage Act (Annexure P-2) from the Court of learned Principal Judge, Family Court, Mukerian, to any other Court within district Hoshiarpur.

Learned counsel for the petitioners submits that respondent-husband had initially filed a petition under Section 9 of the Hindu Marriage Act, for Restitution of Conjugal Rights, at Kurukshetra. The said petition was transferred from Kurukshetra to Mukerian by a co-ordinate Bench, vide order dated 15.11.2018 (Annexure P-3), passed in TA-543-2018. Before the decision of TA-543-2018, a petition under Section 25 of the Guardian and Wards Act was also filed by the respondent-husband, at Mukerian itself.

The matters are listed before the Principal Judge, Family Court at Mukerian. An application (Annexure P-7) for transfer of the petition under Section 125 Cr.P.C., petition under Section 9 of the Hindu Marriage Act as well as petition under Section 25 of the Guardians and Wards Act was moved before the learned District Judge, Hoshiarpur, on the following grounds:-

“

- (a) Firstly respondent filed evidence through his affidavit and counsel for applicant was compelled to cross examine on the same day as the counsel for applicant requested the presiding officer that if respondent wants to be cross examined on the same and fixed date, he has to provide copy of affidavit prior the fixed date and the counsel of the applicant also filed application for it, but the Presiding Officer compelled to cross examine Ashwani Kumar.*
- (b) That respondent tendered electronic documents without certificate of Forensic lab and marked and later on while cross examination of evidence of applicant of the same was played before applicant witness inspite of giving judgment of Hon'ble Higher Court and objected that these documents can only be put when these are already proved as genuine documents. But the Presiding Officer allowed the respondent and did not give any opportunity to go to higher court against his order and curtail the right of the applicant.*
- (c) That on the last date of hearing, applicant was bound to appear early in houses of court for further cross examination. Applicant and her counsel came to the court at 10:00 AM and requested for cross examination but the Presiding Officer till 11:30 AM did not start cross examination and then the counsel of the applicant had gone to Dasuya Court for some case and the Presiding Officer called the case of applicant and when applicant appeared before the Presiding Officer and requested him that her counsel had gone to Dasuya Court and he will come soon, but the behavior of the Presiding Officer was not of judge and compelled the applicant to start further proceedings.*
- (d) That it is pertinent to mention here that the case u/s 125 Cr.P.C. was fixed for order from so many dates, but till date no order has been passed.”*

The learned District Judge, Hoshiarpur, after hearing the counsel for the parties dismissed the application vide its order dated 25.02.2020 (Annexure P-8), while specifically observing that there is nothing adverse, which has been pointed out in so far as the conduct of the Presiding Officer is concerned.

Learned counsel for the petitioners vehemently argues that the Presiding Officer has shown a clear cut bias in favour of the respondent – husband in as much as the petition under Section 125 Cr.P.C. has not been decided finally and on the other hand no time was given to the petitioners for cross-examination of the witness and the applications for deferring the hearing (Annexure P-5 and P-6) were not considered. Therefore, proper opportunity of hearing in these cases is not being afforded to the petitioners. Learned counsel for the petitioner further submits that the Presiding Officer has taken on record certain documents, *dehors* the provisions of law, thereby displaying a clear bias in favour of the respondent–husband. It is, thus, prayed that this application be allowed.

I have heard learned counsel for the petitioners and have gone through the file of this case.

A perusal of order dated 15.11.2018, passed by a coordinate Bench in TA-543-2018 reveals that there is specific observation that the Court/s would try to finally decide the cases by August 2019. Learned District Judge, Hoshiarpur has rightly observed that if the Presiding Officer, before whom all the matters are listed, was trying to expedite the proceedings in all the cases, the same cannot be held against him.

Learned counsel for the petitioner is unable to point out anything on record to indicate bias on the part of the Presiding Officer in favour of the respondent – husband. The allegations raised are not substantiated in any manner. The ingredients to indicate bias are not forthcoming at this stage.

Thus in the given factual matrix, I do not find any ground to interfere and transfer the matters. Needless to say, the petitioners are at liberty to avail the remedy/remedies in so far as their grievance in regard to the alleged procedural derelictions are concerned or for acceptance of documents *dehors* the provisions of law etc. or any such grievance.

This petition is accordingly disposed of.

18.11.2020

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No