

Sr. No.215

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

TA-833-2019

Date of Decision: 18.02.2020

HARSH

... Applicant

Versus

ASHISH NARWAL

...Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr.H.S.Johal, Advocate
for the applicant.

None for the respondent.

ARUN MONGA, J.(ORAL)

1. Applicant-wife seeks transfer of petition filed by the respondent-husband under Sections 7, 10, 12 of Guardian and Wards Act, 1890 for custody of minor son namely Adhiraj titled as “Ashish Narwal v/s Harsh” pending in the Court of District Judge, Family Courts, Sonapat to the Court of competent jurisdiction at Dera Bassi or Mohali.

2. Learned counsel for the applicant submits that there is plethora of complaints between the parties is already pending in courts at Derabassi.

3. Learned counsel for the applicant submits that petitioner is residing at Derabassi with her parents and has no source of income. One minor son aged 4 years born out of the wed-lock is residing with the applicant-wife who needs constant care and attention of the mother. She cannot left him behind to attend the Court proceedings. Therefore, it is difficult for her to

come to Sonapat on each date of hearing which is almost 192 kms from Derabassi.

4. Despite service, none has put in appearance on behalf of the respondent. It seems that respondent-husband is deemed to have consented the present transfer application by not contesting the same.

5. I have heard learned counsel for the applicant and have gone through the record of the case.

6. All the cases pending between the parties are aftermath of matrimonial discord. Keeping in view the contentions in the application and the conceded position that petition under Section 125 Cr.P.C., execution petition under Section 128 Cr.P.C. and complaint under Sections 156(3) Cr.P.C. are already pending at Derabassi, it would be proper, appropriate and in the interest of justice, if all the cases are tried and decided at one place.

7. Reference may also be had to the observations made by Hon'ble the Supreme Court of India in cases titled as "***Sumita Singh Vs. Kumar Sanjay and another***", ***AIR 2002 SC 396*** and ***Rajni Kishor Pardeshi v. Kishor Babulal Pardeshi***" ***2005 (12) SCC 237***, wherein in matrimonial matters, convenience of wife is to be preferred over the convenience of husband.

8. Even otherwise, the ethos as manifested under Article 51-A of Constitution of India also envisage that it shall be fundamental duty of every citizen of India to uphold the dignity of woman. In addition, per Article 15 (3), power has also been conferred on the State to make special provisions for women and

children.

9. It was perhaps in this spirit that an amendment was inserted by Act 50 of 2003 with effect from 23.12.2003 in Hindu Marriage Act, 1955, whereby, in case of a wife being the petitioner, jurisdiction was conferred to the Court within local limits of whose ordinary original civil jurisdiction, the wife is residing on the date of presentation of the petition. In fact the very statement of objects and reasons of the Bill whereby Clause (iiia) was inserted in Section 19 (i) of HMA, by way of marriage laws (Amendment Act 2003) states as below :

“The Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 provide that a petition for relief under the provisions of these Acts shall be presented to the District Court within the limits of whose original civil jurisdiction the marriage was solemnized or the respondent, at the time of the presentation of the petition, resided or the parties to the marriage last resided together or the petitioner was residing at the time of the presentation of the petition, in a case where the respondent was at the time residing outside the territories to which these Acts extended or had not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive. However, these provisions are not considered adequate or fair as far the women are concerned. Under the existing provisions, a petition cannot be filed by the aggrieved wife to the District Court within the local limits of whose ordinary jurisdiction she may be residing. In view thereof, the Government has decided to amend the provisions of these Acts so that the wife can also file petition in the District Court within local limits of whose

jurisdiction she may be residing.”

10. After the aforesaid amendment, husband can only institute proceedings, either where marriage was solemnized or where the wife is residing or where the parties last resided together. Only in a case where wife is residing outside India, the husband can institute proceedings where he is residing. Whereas, wife can file a petition on the additional ground of her being resident within the local limits of the competent Court. The said right has been exclusively conferred on a wife so as to keep her convenience in mind in the matrimonial matters.

11. Indisputably, minor child of the parties is residing with the applicant at Derabassi. Section 9(1) of the Guardians and Wards Act, 1890 provides that the jurisdiction to try application vests with Court, where the minor ordinarily resides.

12. In the premise, present application is allowed. The petition in question pending before the Court of District Judge, Family Court, Sonapat is ordered to be withdrawn from that Court and is transferred to the District Judge, Derabassi for its disposal in accordance with law by the Court concerned.

18.02.2020

Sonu

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No