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

TA-408-2021 (O&M)

Date of decision : 03.12.2021

Bharat Sharma

... Petitioner(s)

Versus

Krishan Kumar and another

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. H.S. Saini, Advocate for the petitioner.

Mr. Sherry K. Singla, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

Heard in virtual mode.

CM-13075-CII-2021

This is an application for preponing the date of hearing in the main case from 14.02.2022 to an early date.

Mr. Sherry K. Singla, learned counsel for the non-applicant/respondents, states that he has no objection if the present application is allowed and the date of hearing in the main case is preponed.

For the reasons stated in the application the same is allowed and, with the consent of learned counsel for the parties, the main case is taken on board today itself.

TA-408-2021

The present petition has been filed under Section 24 read with Section 151 of the Code of Civil Procedure, 1908 seeking transfer of the petition under Sections 25, 19 and 24 of the Guardian and Wards Act, 1890

(in short the '1890 Act') i.e. **GW/7/2019** titled as "**Bharat Sharma Vs. Krishan Kumar and others**" pending in the Court of Civil Judge (Senior Division), Nangal, District Rupnagar, exercising the powers of Guardian Judge, to the Court of competent jurisdiction outside District Rupnagar.

The facts relevant to the present *lis* are that the petitioner, who is the father of a minor child aged 14 years, had preferred a petition under Sections 25, 19 and 24 of the 1890 Act (Annexure P-2) for custody of the minor child who is residing with her maternal grandparent as mother of the child has since expired. Admittedly, the minor child is residing with her maternal grandparent at Nangal, District Rupnagar. The petitioner also rightly filed the petition in District Rupnagar. Since the disposal of the matter was being delayed, the petitioner filed CR No.2999 of 2019 for issuance of directions to the Additional Civil Judge (Senior Division), Nangal, District Rupnagar to decide the petition within a period of three months. This Court vide order dated 08.05.2019 (Annexure P-3) disposed off the petition with a specific direction which reads as under:

"It is further directed that the case shall be tried by learned Civil Judge (Senior Division), Rupnagar (Guardian Judge) himself and if it has been transferred to some other Court for one or the other reason, it will stand transferred to the Court of learned Civil Judge (Senior Division), Rupnagar (Guardian Judge)."

Thereafter, a review application being RA-CR-86-2019 was filed by the respondents herein wherein the following order was passed:

"The present application has been filed for recalling of the order dated 08.05.2019 to the extent vide which the

matter was ordered to be transferred to the Court of Civil Judge (Sr.Division), Rupnagar (Guardian Judge). As per the facts on record, the petitioner had himself filed an application for transferring the said case from the Court of Guardian Judge-cum-District Judge, Rupnagar to the Court of Additional Civil Judge (Sr.Division) Anandpur Sahib on 13.02.2019. However, the Court transferred the proceedings from the Court of Civil Judge (Sr.Division) Rupnagar to the Court of Additional Civil Judge (Sr.Division) Nangal instead of Anandpur Sahib on the ground that it would be convenient for the parties to pursue the case at Nangal and even the minor child is also living at Village Bainspur, Tehsil Nangal, District Rupnagar. Therefore, the argument of the petitioner, who is present in Court that the case should be retained at Rupnagar, has no merit. In case the proceedings are ordered to be retained at Rupnagar, the applicant, who is 70 years old and the minor child will have to travel at the distance of 70-80 kms from the place of their residence. Besides the fact that order dated 08.05.2019 was an ex parte order, a direction for transferring the matter to the Court of learned Civil Judge (Senior Division), Rupnagar (Guardian Judge) was passed under the assumption that the Guardian Judge is at Rupnagar, whereas, the Court of Additional Civil Judge (Sr.Division) Nangal, too has the jurisdiction to try the said case.

At this stage, the petitioner submitted that as per the order dated 29.05.2019, there was no mention regarding conferring of powers on Additional Civil Judge (Sr.Division) posted at Sub Divisional Levels, whereas learned counsel for the respondents has placed

on record a copy of the Notification, dated 11.06.1996, empowering the Civil Judges (Sr.Division) in each of the Districts in Punjab, Haryana and UT, Chandigarh to dispose of any proceedings under the Guardian and Ward Act, 1890, transferred to him by the District Judge of the same district.

In view of the above, the application is allowed and the order dated 29.05.2019 is set aside to the extent vide which the matter was transferred to the Court of Civil Judge (Sr.Division) Rupnagar back to the Court of Additional Civil Judge (Sr.Division) Nangal to proceed further.”

The matter has thereafter been proceeding at Nangal, District Rupnagar. The petitioner alleges that he was attacked by the uncle (Mr. V.K. Soni, Advocate) of the minor child and his Munshi (Clerk) on 18.03.2021 qua which a complaint was also filed by him. Subsequently, the present petition has been preferred by the petitioner for transferring the case initiated by him at Nangal, District Rupnagar.

Learned counsel for the petitioner would contend that the petitioner is under threat at the hands of respondent No.1 and his son, who is a lawyer practicing at Tehsil Courts Complex at Nangal, Anandpur Sahib as well as at District Courts at Rupnagar, and that they are interfering in the judicial proceedings. Hence, it is prayed that the proceedings may be transferred anywhere out of District Rupnagar.

Learned counsel for the respondents states that the petitioner had himself filed the petition under Sections 25, 19 and 24 of the 1890 Act at Rupnagar. In CR No.2999 of 2019 filed by the petitioner it was directed by this Court on 08.05.2019 that the matter would be heard by the Civil

Judge (Senior Division) which order was subsequently modified on a review application (RA-CR-86-2019) filed by the respondents on 23.09.2019 whereby the matter was transferred back to the Court of Additional Civil Judge (Senior Division) Nangal, to proceed with the matter.

Learned counsel for the respondents would point out that the said order in the review application was passed in the presence of the petitioner, who appeared in person and, hence, it would not now lie in the mouth of the petitioner to ask for a transfer of the case outside District Rupnagar. It is further the contention of learned counsel for the respondents that the case now is at the stage of evidence.

Heard learned counsel for the parties.

The petitioner in the present case had initiated the proceedings under Sections 25, 19 and 24 of the 1890 Act seeking custody of the minor child who is residing with her maternal grandparent after the demise of her mother. In case the matter is transferred out of District Rupnagar the maternal grandparent, who is 72 years of age, would need to travel a long distance along with the minor child. The petition was filed at the behest of the petitioner and, thereafter, in his presence the order dated 23.09.2019 was passed whereby the matter was sent back to the Court of Additional Civil Judge (Senior Division) Nangal where the matter has since been proceeding and is now at the stage of evidence. Admittedly, the evidence has partially been recorded.

The apprehension expressed by the petitioner seems to be totally ill-founded and is vague in nature. Though a complaint has been appended with the petition as Annexure P-5, however, MLR appended with

the present petition as Annexure P-6 does not reveal any such injuries having been received by the petitioner. In fact, it very clearly reveals that there is a superficial abrasion on right hand little finger, dorsal side, and there was a pain in right orbital area of face. No other injury has been mentioned. The matter was initiated in the year 2018 and till date the petitioner seems to have had no complaint qua the relatives of his deceased wife. In any case even as per the provisions of Section 9 of the 1890 Act a petition for custody of a minor child has to be filed where the minor ordinarily resides and admittedly in the present case the minor is residing with the respondent at Nangal, District Rupnagar.

Keeping in view the totality of the above-mentioned circumstances, I do not find any merit in the present petition which is dismissed.

03.12.2021
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO