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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.211 of 2022 (O&M)
Date of decision: 27.10.2022

Nishant

....Petitioner

Versus

Kapil Sharma and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.K. Chaudhary, Advocate
and Mr. Amandeep Singh, Advocate
for the petitioner.

None for respondent No.1.

Mr. G.S. Bhinder, Advocate
for respondents No.2 and 3.

ARVIND SINGH SANGWAN J. (Oral)

The instant petition has been filed by the father of the minor child seeking transfer of a petition filed by respondent No.1 under Section 6 of the Hindu Minority and Guardianship Act, from the Court of Additional Civil Judge (Sr. Division), Abohar, exercising the powers of District Judge under the Guardian and Wards Act to a Court of competent jurisdiction at Pathankot where the petitioner along with the minor child is residing.

Despite service, the respondent No.1, who has filed the petition under Section 6 of the Hindu Minority and Guardianship Act, has not put in appearance.

Brief facts of the case are that the respondent No.1 has filed the aforesaid petition with the allegation that he was married with Priya @ Riya, who is daughter of respondents No.2 and 3 and out of the

wedlock of respondent No.1 and Priya @ Riya, a child was born on 06.08.2012, who is residing in the custody of the petitioner and her son is in illegal custody of the respondents, who are the parents of deceased Priya @ Riya. It is further stated that in a proceeding under Section 13-B of the Hindu Marriage Act by way of mutual consent, a decree of divorce was passed on 18.09.2014 between the respondent No.1 Kapil Sharma and Priya @ Riya, however later on, a compromise was effected between the parties and they again started living together and on 04.12.2022, Priya Rani @ Riya had died. It is also stated that the minor child is residing in the illegal custody of respondents No.2 and 3 and the petitioner.

Counsel for the petitioner has argued that the child was born out of the live-in relationship of the petitioner – Nishant with Priya Rani @ Riya, after the marriage between the respondent No.1 Kapil Sharma and Priya Rani @ Riya was annulled. It is further submitted that the child is residing with the petitioner for the last 07 years and is studying in a school at Pathankot. Lastly, it is submitted that in view of Section 9 of the Guardian and Wards Act, the jurisdiction to file a petition would lie at a place where the minor child is residing and therefore, filing of the petition under Section 6 of the Hindu Minority and Guardianship Act, by respondent No.1 at Abohar is not at all maintainable.

As noticed above, no one has put in appearance on behalf of respondent No.1.

Counsel appearing for respondents No.2 and 3 has no objection, if the present petition is transferred from Abohar to Pathankot.

In view of the above, this Court deem it appropriate to allow the present petition, subject to the following conditions:-

- 1. The petition filed under Section 6 of the Hindu Minority and Guardianship Act, pending before the Court of Additional Civil Judge (Sr. Division) Abohar, exercising the powers of District Judge under the Guardian and Wards Act will be transferred to the competent Court of jurisdiction at Pathankot.*
- 2. The District Judge, Pathankot, will assign the said petition to the competent Court of jurisdiction.*
- 3. The Additional Civil Judge (Sr. Division) Abohar, exercising the powers of District Judge under the Guardian and Wards Act, is directed to transfer all the record pertaining to the aforesaid case to District Judge, Pathankot.*
- 4. The parties are directed to appear before the trial Court, Pathankot, within a period of 01 month from today.*
- 5. The Court concerned at Pathankot will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.*
- 6. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.*

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

27.10.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No