

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

TA No. 429/2020 (O&M)

Date of decision: November 16 , 2022

Manjit Rani and another

.....Petitioners

v

Pawan Rai and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. BS Jaswal, Advocate for the petitioners.

Mr. GS Verma, Advocate for respondents.

Nidhi Gupta,J. (Oral)

This is a petition seeking transfer of case no. GW/63/2020 titled 'Pawan Rai v Manjit Rani and others', filed by respondent no.1 herein seeking custody of his minor daughter Himakshi u/s 25 of the Guardian and Wards Act, pending before the Court of Principal Judge, Family Courts-cum-District Judge, Ludhiana-cum-Guardians and Wards Judge, Ludhiana, to a Court of competent jurisdiction at Jalandhar.

This petition has been filed by the maternal grandmother and maternal uncle (Nani and Mama) of minor child Himakshi. Ld. Counsel for the petitioners has submitted that Poonam Thapar, daughter of petitioner no.1 was married with Pawan Rai (respondent no.1 herein) on 4.12.2016. Out of the said wedlock Himakshi was born on 10.11.2017. It is alleged that due to utmost cruelties received at the hands of respondent no.1 and his family members, under forced circumstances Poonam Thapar

alongwith minor Himakshi left the company of respondent no.1 and started living at her parental house. In this regard she also made a complaint dated 16.9.2019 (P-3) to SSP, Kapurthala. Unfortunately Poonam Thapar died on 9.10.2019. During the pendency of criminal complaint, respondent no.1 compromised the matter and left Himakshi forever with the petitioners as he wanted to marry another girl of his own choice. Accordingly, he gave an affidavit dated 10.10.2019 (P-5) to this effect stating therein that:

“ Now the said child will remain with her maternal grandmother, due to which, today Panchayat, including my relatives Ravinder Kumar son of Mool Chand, Parveen Kumar son of Pritam, Parmod Kumar son of Pritam, have decided that I would be bound to deposit Rs.7500/- (Rupees Seven thousand five hundred) out of my salary to the account in the name of my daughter, every month and out of this account, my brother-in-law can withdraw Rs.7500/- (Rupees seven thousand five hundred) for taking care and meeting the expenses of my daughter and I will be bound to give signed cheque. I will not close this account till my daughter attains the age of 18 years nor will give any affidavit for giving money after deducting from my salary and I will deposit rupees one lac fifty thousand in the name of my daughter under Sukanya Scheme. All the grandfather family (dadka Parivar) will have right to meet the child.”

Counsel for the petitioners admitted that accordingly, the respondent-father had washed his hands off his daughter, and had categorically said that petitioner No. 1 will take care of the minor girl who is now five years old. Further submitted that the respondent-father made a few payments as promised above, but suddenly stopped paying after sometime.

Thereafter, again on 9.12.2019 as respondent no.1 did not abide by the conditions he had set out for himself in the affidavit (P-5), a compromise dated 3.12.2019 (P-6) was entered into between the parties,

wherein it was recorded that respondent-father was admittedly unable to take care of the minor child:

“...the respectable persons of both the families had given the responsibility of daughter of Poonam Thapar namely Himakshi, who is aged about 2 years, to the mother of girl namely Manjit Rani and son Amit Kumar due to the reason that Pawan Rai is working in Railway and Himakshi is too minor and he cannot take care of her properly...”. (Emphasis supplied)

It is therefore, pleaded that especially in the above facts and circumstances custody should be with petitioners since they have been taking care of her since 2019.

Ld. Counsel for the petitioners has further submitted that the petitioner No. 1 being old is unable to travel and therefore, it will be very difficult for her to defend the custody case in Ludhiana. It is further stated that the petitioner No. 2 is working to support the minor child and petitioner No. 1, and cannot travel to Ludhiana to attend to the frequent dates in the pending case.

Counsel for the respondent has firmly opposed this petition and stated that father of the child is the natural guardian and that the petitioners are not taking proper care of the child. It is further submitted on behalf of the respondent that the money that was being paid for the care of the minor girl was being misused by the petitioners.

I am not inclined to go into the merits of the case, as the same is not subject matter of the present Transfer Petition and the same will be determined by the Family Court in the pending petition under the Guardians and Wards Act. For the purposes of this petition it is sufficient that petitioner no.1 is an old lady and it is difficult for her to travel from

Jalandhar to Ludhiana, which is at a distance of about 75-80 kilometers one-way. Moreover, she has to look after the minor child who by now is stated to be very attached to her. It is also relevant that petitioner no.2 is working to support the petitioner No. 1 and the minor child and therefore, cannot travel frequently from Jalandhar to Ludhiana, to defend the above said case at Ludhiana.

In view of the above facts, present petition is allowed and it is directed:-

1)that case no .GW/63/2020 titled ‘Pawan Rai v Manjit Rani and others’, u/s 25 of the Guardian and Wards Act filed by respondent no.1 seeking custody of minor Himakshi is transferred from the Court of Principal Judge, Family Courts-cum-District Judge, Ludhiana-cum-Guardians and Wards Judge, Ludhiana to a Court of competent jurisdiction at Jalandhar.

2)that the District Judge, Ludhiana shall ensure quick dispatch of said case file, complete in all respect, to District Judge, Jalandhar.

3)that the District Judge, Jalandhar will assign the said case to a court of competent jurisdiction.

4)that the parties, through their counsel, are directed to appear before the District Judge, Jalandhar on 10.12.2022 for further proceedings in accordance with law.

Petition stands allowed in the above terms.

Pending application(s),if any also stand disposed of.

November 16,2022

Loshi

RAJINDER PARSHAD
2022.11.16 10:13
I attest to the accuracy and
integrity of this document

(Nidhi Gupta)
Judge