

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

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TA No.161 of 2023 (O&M)
Date of decision: 08.02.2023

Sumanpreet Kaur**...Petitioner(s)****vs****Tarlok Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Jagdish S. Mahal, Advocate for the petitioner.*********NIDHI GUPTA, J.(Oral)**

1. Prayer in this petition filed by petitioner is for transfer of the petition bearing No.GW/2/2020 filed by respondents No.1 and 2 under Sections 24 and 25 of the Guardian and Wards Act, 1890, titled "Tarlok Singh and others vs. Sumanpreet Kaur and others" pending in the Court of Principal Judge, Family Court, Ajnala, District Amritsar to a court of competent jurisdiction at Gurdaspur.

2. Learned counsel for the petitioner, inter alia, submits that:

i) that marriage was solemnized between petitioner and son of respondents No.1 and 2.

ii) that husband of the petitioner has expired on 18.08.2017.

iii) that one daughter was born out of the wedlock on 27.12.2017.

iv) that the petitioner along with her minor daughter is living with her parents at Gurdaspur.

v) that the distance between place of residence of petitioner and place of proceedings is 80 Kms. (one side)

vi) that respondents No.1 and 2 are paternal grandparents of the minor child who's custody they are seeking.

vii) that as per Section 9 of the Guardian and Wards Act, 1890, respondents No.1 and 2 have to file the petition for custody where the minor resides.

3. I have heard learned counsel for the petitioner.

4. The legal position in such like cases as the present one, is well established. As per Section 9 of the Guardians and Wards Act, 1890, petition for custody is required to be filed where the minor child ordinarily resides. In the present case, minor child is residing with petitioner at Gurdaspur.

5. Moreover, in matters arising out of matrimonial discord, it has been very categorically laid down by the Hon'ble Supreme Court in **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha," 2022 Live Law (SC) 627**, is most relevant wherein the Hon'ble Supreme Court has held as under:-

“9. The cardinal principle for exercise of power under section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the

same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.”

6. Further reliance can be placed upon the judgments in “**Sumita Singh vs Kumar Sanjay**”, 2002 SC 396 and “**Rajani Kishor Pardeshivs Kishor Babulal Pardeshi**”, 2005(12) SCC 237, wherein the Hon’ble Supreme Court has observed that “while deciding the transfer application, the Courts are required to give more weightage and consideration to the convenience of the female litigants and transfer of legal proceedings from one Court to another should ordinarily be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships.”

7. Even this Court in number of cases has followed the aforesaid principle of law. Accordingly, it is well settled that while considering the transfer of a matrimonial dispute/case, at the instance of the wife, the Court is to consider the family condition of the wife, the custody of the minor child, economic condition of the wife, her physical health and earning capacity of the respondent and most important the convenience of the wife i.e. she cannot travel alone without assistance of a male member of her family, connectivity of the place to and fro from her place of residence as well as bearing of the litigation charges and travelling expenses.

8. After going through the entire paperbook, considering the fact that issuance of notice to the respondents has the consequences of staying further proceedings before the trial Court, and because, the law and stipulation in respect of Section 9 of the Guardians and Wards Act, is clear and because, otherwise the petitioner will have to bear the litigation expenses and transportation expenses and in case, notice of motion is

issued, even the respondents will have to bear the litigation expenses and in view of the judgments i.e. **Sumita Singh's** case (supra), **Rajani Kishor Pardeshi's** case (supra) and **N.C.V. Aishwarya's** case (supra) passed by the Hon'ble Supreme Court, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The petition bearing No.GW/2/2020 filed by respondents No.1 and 2 under Sections 24 and 25 of the Guardian and Wards Act, 1890, titled "Tarlok Singh and others vs. Sumanpreet Kaur and others" pending in the Court of Principal Judge, Family Court, Ajnala, District Amritsar is transferred to a court of competent jurisdiction at Gurdaspur.
- b) The Id. District Judge, Amritsar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Gurdaspur.
- c) The parties are directed to appear before the District & Sessions Judge, Gurdaspur on 01.03.2023.
- d) The District Judge, Gurdaspur will assign the said petition to the Court of competent jurisdiction.

9. The concerned Court at Gurdaspur 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.

10. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

11. However, liberty is granted to the respondent to revive this petition, if he intends to contest the same, provided that:-

- (a) The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Family Court, Ajnala on each and every date of hearing.
- (b) The respondent will bring a demand draft of Rs.25,000/-, drawn in favour of petitioner, towards the litigation expenses to pursue the case at Courts, Amritsar in case the respondent opts to contest this petition.

12. I am supported in the above by decisions rendered by a Coordinate Bench of this Court in **TA No. 1315/2022, Rohini Arora v Nitin Talwar; TA No. 1322 of 2022, Jaswinder Kaur v Gurvinderjeet Singh; and TA No. 1323 of 2022, Usha Rani v Karmajit Singh.**

13. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Gurdaspur on 01.03.2023, it is directed that a copy of this order be sent to the respondent(s) through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioner through her counsel, present in the Court, is directed to ensure her appearance accordingly.

Disposed of.

08.02.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge