

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

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**Transfer Application No.236 of 2023
Date of decision :-15.03.2023**

Kanchan**.....Petitioner****Versus****Sumit Kumar****.....Respondent**

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kamal Kumar, 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/5/2023 filed by respondent-husband under the Guardian and Wards Act, 1890, titled “Sumit Kumar vs. Kanchan” pending in the Court of Principal District Judge, Family Court, Bhiwani to a Court of competent jurisdiction at Rohtak.

2. Respondent has filed the above petition seeking custody of the minor son Aayansh, who is currently residing with the petitioner at Rohtak.

3. Learned counsel for the petitioner, inter alia, submits :

- i) that the parties solemnized marriage on 01.12.2019.
- ii) that one male child was born out of the wedlock on 11.1.2022.

- iii) that the petitioner along with minor son is living with her parents at Rohtak.
- iv) that the distance between the place of residence and place of proceedings is 62 kms. (one side).
- v) that as per Section 9 of the Guardian and Wards Act, 1890, respondent has to file the petition for custody of the minor son where the minor ordinarily resides.

4. I have heard learned counsel for the petitioner.

5. 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 son is admittedly residing with petitioner at Rohtak.

6. After going through the entire paper-book, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner-wife will have to bear the litigation expenses and transportation expenses and in case, notice of motion is issued, even the respondent-husband has to bear the litigation expenses and in view of the above facts, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The petition bearing No.GW/5/2023 filed by respondent-husband under the Guardian and Wards Act, 1890, titled “Sumit Kumar vs. Kanchan” pending in the Court of learned Principal District Judge, Family

Court, Bhiwani is transferred to a court of competent jurisdiction at Rohtak.

- b) The Id. District Judge, Bhiwani is directed to transfer complete record pertaining to the aforesaid case to District Judge, Rohtak.
- c) The parties are directed to appear before the District & Sessions Judge, Rohtak on 20.04.2023.
- d) The District Judge, Rohtak will assign the said petition to the Court of competent jurisdiction.

7. 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, Rohtak on 20.04.2023, 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.

March 15, 2023

Vijay Asija

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No