

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

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**Transfer Application No.368 of 2023
Date of decision :-23.03.2023**

Sukhvir Kaur and another**.....Petitioners****Versus****Harjit Singh****.....Respondent**

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sukhveer S. Killianwali, Advocate
for the petitioners.

NIDHI GUPTA J. (Oral)

1. Prayer in this petition filed by petitioner is for transfer of the petition bearing No.GW/39/2022 filed by respondent-husband under the Guardians and Wards Act, 1890 (hereinafter referred as 'the Act'), titled 'Harjit Singh vs. Sukhvir Kaur etc.' pending in the Court of Addl. Principal Judge, Family Court, Talwandi Sabo, District Bathinda to a Court of competent jurisdiction at Dabwali, District Sirsa.

2. Respondent has filed the above petition seeking custody of the minor son Master Karandeep Singh, who is currently residing with the petitioner at Dabwali, District Sirsa.

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

- i) that the marriage between petitioner No.1 and the respondent was solemnized in the year 2011.
- ii) that one male child was born out of the wedlock on 20.3.2013.

- iii) that the petitioner along with minor son is living with her parents at Dabwali, District Sirsa.
- iv) that the distance between the place of residence and place of proceedings is 55 kms. (one side).
- v) that as per Section 9 of the Act, respondent has to file the petition for custody of the minor son where he ordinarily resides.
- vi) That the proceedings arising out of under Section 125 Cr.P.C. filed by the petitioner No.1-wife, are pending in the Courts having competent jurisdiction at Dabwali, District Sirsa.

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 Act, 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 Dabwali, District Sirsa.

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/39/2022 filed by respondent-husband under the Act, titled 'Harjit Singh vs. Sukhvir Kaur etc.' pending in the Court

of learned Addl. Principal Judge, Family Court, Talwandi Sabo, District Bathinda is transferred to a Court of competent jurisdiction at Dabwali, District Sirsa.

- b) The Id. District Judge, Bathinda is directed to transfer complete record pertaining to the aforesaid case to District Judge, Sirsa.
- c) The parties are directed to appear before the District & Sessions Judge, Sirsa on 16.5.2023.
- d) The District Judge, Sirsa 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, Sirsa on 16.5.2023, 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 23, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No