

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

2023:PHHC:049153

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**TA No.420 of 2023 (O&M)
Date of decision: 11.04.2023**

Parmila

...Petitioner

vs

Sandeep

...Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. SS Mor, 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/11/2022 filed by respondent-husband under Section 25 of the Guardians and Wards Act, 1890, titled "Sandeep vs. Parmila" pending in the Court of Principal Judge, Family Court, Meham, to a court of competent jurisdiction at Bhiwani.

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

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

- i) that the parties solemnized marriage on 24.12.2018.
- ii) that one son was born out of the wedlock on 19.10.2019.
- iii) that the petitioner along with minor son is living with her parents at Bhiwani since 05.07.2022.
- iv) that the distance between the place of residence and place of proceedings is 50 kms. (one side).
- v) that as per Section 9 of the Guardians and Wards Act, 1890, respondent has to file the petition for custody of the minor son where he ordinarily resides.

vi) that the following cases are also pending between the parties at Bhiwani:-

- a. Petition under Section 125 Cr.P.C.
- b. Petition under the Protection of Women from Domestic Violence Act, 2005.
- c. Complaint to the SSP, Bhiwani.

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 Bhiwani.

6. After going through the entire paperbook, 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/11/2022 filed by respondent-husband under Section 25 of the Guardians and Wards Act, 1890, titled “Sandeep vs. Parmila” pending in the Court of Principal Judge, Family Court, Meham, is transferred to a court of competent jurisdiction at Bhiwani.

b) The Id. District Judge, Rohtak is directed to transfer complete record pertaining to the aforesaid case to District Judge, Bhiwani.

c) The parties are directed to appear before the District & Sessions Judge, Bhiwani on 11.05.2023.

d) The District Judge, Bhiwani 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, Bhiwani on 11.05.2023, 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.

11.04.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge