

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

2023:PHHC:064174

106

TA No.565 of 2023(O&M)
Date of decision: 04.05.2023

Harminder Kaur

...Petitioner

vs

Raman Kumar

...Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Neha Dewan, Advocate for the petitioner.

NIDHI GUPTA, J.(Oral)

Prayer in this petition filed by petitioner is for transfer of the petition bearing No.GW/175/2022 filed by respondent-husband under Section 6 of the Hindu Minority and Guardianship Act, 1956 and Section 25 of the Guardians and Wards Act, 1890, titled "Raman Kumar vs. Harminder Kaur" pending in the Family Court, Ludhiana to a court of competent jurisdiction at Patiala.

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

i) that marriage between the parties was solemnized on 05.02.2016.

ii) that one son was born out of the wedlock on 24.02.2017.

iii) that the petitioner along with minor son, who is studying in Guru Nanak Foundation Public School, Patiala, is living with her parents at Patiala.

iv) that the distance between the place of residence and place of proceedings is 100 kms. (one side).

v) that vide order dated 18.01.2023 (Annexure P6) passed in TA-67-2023, this Court has already transferred petition under Section 13 of the Hindu Marriage Act, 1955, pending between the same parties, to Patiala.

vi) that the petitioner has no source of income.

vii) that the following cases are also pending between the parties at Patiala:-

- a. Complaint under the Protection of Women from Domestic Violence Act, 2005.
- b. Petition under Section 125 Cr.P.C.
- c. FIR No.10 dated 08.02.2022, registered under Sections 406 and 498-A IPC, at Police Station Women, District Patiala.

viii) 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.

3. I have heard learned counsel for the petitioner.

4. The law in such like cases is very clear. As per Section 9 of the Guardians and Wards Act, 1890, petition seeking custody of a minor child is to be filed where the minor child is ordinarily residing. In the present case, the minor son is residing with the petitioner at Patiala. Present petition for custody of the minor son has been filed by the respondent-husband under Section 6 of the Hindu Minority and Guardianship Act, 1956 and Section 25 of the Guardians and Wards Act, 1890. As per Section 2 of the Hindu Minority and Guardianship Act, 1956, the said Act is supplemental to the Guardians and Wards Act, 1890.

5. Section 2 of the Hindu Minority and Guardianship Act, 1956, is being reproduced hereunder:-

“The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Guardians and Wards Act, 1890.”

6. Therefore, present custody petition should have been filed where the minor son is ordinarily residing. Accordingly, in view of the

facts as noticed above as also keeping in view the fact that great inconvenience and hardship will be caused to the petitioner to travel a distance of 100 kms to Ludhiana with minor child, present petition deserves to be allowed. Moreover, petition filed by respondent-husband under Section 13 of Hindu Marriage Act has already been transferred to Patiala by this Court vide order dated 18.01.2023.

7. 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/175/2022 filed by respondent-husband under Section 6 of the Hindu Minority and Guardianship Act, 1956 and Section 25 of the Guardians and Wards Act, 1890, titled “Raman Kumar vs. Harminder Singh” pending in the Family Court, Ludhiana is transferred to a court of competent jurisdiction at Patiala.

b) The learned District Judge, Ludhiana is directed to transfer complete record pertaining to the aforesaid case to District Judge, Patiala.

c) The parties are directed to appear before the District & Sessions Judge, Patiala on 31.05.2023.

d) The District Judge, Patiala will assign the said petition to the Court of competent jurisdiction.

8. 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, Patiala on 31.05.2023, 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.

04.05.2023
ashok
Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

(Nidhi Gupta)
Judge