

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

2023:PHHC:058266

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**TA No.509 of 2023 (O&M)
Date of decision: 25.04.2023**

Sabiya Bharti

...Petitioner

vs

Bhupinder Kumar Sharma

...Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Arvind Kashyap, 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/11/2023 filed by respondent-husband under the Guardians and Wards Act, 1890, titled "Bhupinder Kumar Sharma vs. Sabiya Bharti" pending in the Court of Principal Judge, Family Court, Patiala to a court of competent jurisdiction at Pathankot.

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

- i) that the parties solemnized marriage on 18.02.2017.
- ii) that two children were born out of the wedlock.
- iii) that the petitioner along with minor children is living at Pathankot.
- iv) that as per Section 9 of the Guardians and Wards Act, 1890, respondent has to file the petition for custody of the minor children where they ordinarily reside.
- v) that the following cases are also pending between the parties at Pathankot:-
 - a. Application under Section 125 Cr.P.C.
 - b. Complaint under the Protection of Women from Domestic Violence Act, 2005.
 - c. Petition under Section 13 of the Hindu Marriage Act, 1955.

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 children ordinarily reside. In the present case, minor children are admittedly residing with petitioner at Pathankot.

5. 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/11/2023 filed by respondent-husband under the Guardians and Wards Act, 1890, titled “Bhupinder Kumar Sharma vs. Sabiya Bharti” pending in the Court of Principal Judge, Family Court, Patiala is transferred to a court of competent jurisdiction at Pathankot.

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

c) The parties are directed to appear before the District & Sessions Judge, Pathankot on 29.05.2023.

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

6. 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, Pathankot on 29.05.2023, 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.

25.04.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge