

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

2023:PHHC:059957

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**TA No.525 of 2023 (O&M)
Date of decision: 27.04.2023**

Rajni Bala

...Petitioner(s)

vs

Ajay Kumar Sharma

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sunil Agnihotri, 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/66/2022 filed by respondent-husband under Section 25 of the Guardians and Wards Act, 1890, titled "Ajay Kumar Sharma vs. Rajni Bala" pending in the Court of Addl. Principal Judge, Family Court, Ludhiana to a court of competent jurisdiction at Hoshiarpur.

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

- i) that the parties solemnized marriage in the year 2012.
- ii) that one son was born out of the wedlock on 06.04.2014.
- iii) that the petitioner along with minor son is living with her sister at Mukerian, District Hoshiarpur.
- iv) that the distance between the place of residence and place of proceedings is 140 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 petitioner has no source of income and respondent is working in Indian Army.

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

a. Petition under the Protection of Women from Domestic Violence Act, 2005.

b. One complaint (COMI-56/2022)

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 child ordinarily resides. In the present case, minor son is admittedly residing with petitioner at Mukerian, District Hoshiarpur.

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/66/2022 filed by respondent-husband under Section 25 of the Guardians and Wards Act, 1890, titled “Ajay Kumar Sharma vs. Rajni Bala” pending in the Court of Addl. Principal Judge, Family Court, Ludhiana is transferred to a court of competent jurisdiction at Hoshiarpur.

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

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

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

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, Hoshiarpur 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.

27.04.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge