

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

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**Transfer Application No.579 of 2023
Date of decision :-08.05.2023**

Neha Patney Kapoor**.....Petitioner****Versus****Dheeraj Kapoor****.....Respondent****CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sanjay Verma, 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/19/2023 filed by respondent-husband under Section 25 read with Section 8 of Guardian and Wards Act, 1890 (hereinafter referred as 'the Act'), titled 'Dheeraj Kapoor vs. Neha Patney Kapoor' pending in the Court of Principal Judge, Family Court, Yamunanagar at Jagadhri to a Court of competent jurisdiction at Gurugram.

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

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

i) that the parties solemnized marriage on
27.11.2015.

- ii) that a male child was born out of the wedlock on 17.09.2016.
- iii) that the petitioner along with minor son is living with her parents at Gurugram.
- iv) that the distance between the place of residence and place of proceedings is 250 kms. (one side).
- v) that as per Section 9 of the Act, respondent has to file the petition for custody of the minor son/daughter where he/she ordinarily resides.
- vi) that the petitioner is a handicapped lady and partially deaf and even otherwise the minor son is studying in Delhi Public School, Sector 45, Gurugram. In order to prove the said facts, the petitioner has annexed Annexure P-2, which is her Disability Certificate and Annexure P-3, the certificate of School fee of the minor son.

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 Gurugram.

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/19/2023 filed by respondent-husband under the Act, titled 'Dheeraj Kapoor vs. Neha Patney Kapoor', pending in the Court of learned Principal Judge, Family Court, Jagadhri is transferred to a Court of competent jurisdiction at Gurugram.
- b) The Id. District Judge, Yamunanagar at Jagadhri is directed to transfer complete record pertaining to the aforesaid case to District Judge, Gurugram.
- c) The parties are directed to appear before the District & Sessions Judge, Gurugram on 31.5.2023.
- d) The District Judge, Gurugram 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, Gurugram on 31.5.2023, 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.

Pending application(s), if any, stands disposed of.

May 08, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No