

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

105-2

2023:PHHC:069185
TA No.620 of 2023(O&M)
Date of decision: 12.05.2023

Monika**...Petitioner****vs****Chetan****...Respondent****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Shokeen Singh Verma, Advocate for the petitioner.

NIDHI GUPTA, J.(Oral)

Prayer in this petition filed by petitioner-wife is for transfer of the petition bearing No.GW-10 of 2020 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 "Chetan vs. Monika" pending in the Court of District and Sessions Judge, Yamuna Nagar at Jagadhri to a court of competent jurisdiction at SAS Nagar (Mohali).

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

i) that marriage between the parties was solemnized on 22.02.2015.

ii) that one son was born out of the wedlock on 24.11.2015.

iii) that the petitioner along with minor son is living with her parents at Kharar.

iv) that the distance between the place of residence and place of proceedings is 115 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 child 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 Kharar. 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 115 kms to Yamuna Nagar 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 SAS Nagar by this Court vide order of even date.

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-10 of 2020 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 “Chetan vs. Monika” pending in the Court of District and Sessions Judge, Yamuna Nagar at Jagadhri is transferred to a court of competent jurisdiction at SAS Nagar (Mohali).
- b) The learned District Judge, Yamuna Nagar is directed to transfer complete record pertaining to the aforesaid case to District Judge, SAS Nagar (Mohali).
- c) The parties are directed to appear before the District & Sessions Judge, SAS Nagar (Mohali) on 02.06.2023.
- d) The District Judge, SAS Nagar (Mohali) 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, SAS Nagar (Mohali) on 02.06.2023, 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.

12.05.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge