

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

2023:PHHC:073228

106

TA No.665 of 2023 (O&M)

Date of decision: 19.05.2023

Aarti Antil

...Petitioner(s)

Vs

Gaurav Malik

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sushil Jain, Advocate for the petitioner.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of petition filed by respondent-husband under Sections 6 and 7 of the Guardians and Wards Act, 1890 read with Sections 6 and 13 of the Hindu Minority and Guardianship Act, 1956, titled 'Gaurav Malik vs. Mrs. Aarti Antil' pending in the Court of Principal Judge, Family Court, Gurugram to a court of competent jurisdiction at Sonipat.

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

i) that the parties were solemnized marriage on 22.05.2015.

ii) that one son was born out of the wedlock on 28.03.2018.

iii) that the petitioner along with minor son is living with her parents at Sonipat since 09.01.2022.

iv) that the following cases are also pending between the parties at Sonipat:-

a. Petition Section 125 Cr.P.C.

b. Petition under Section 9 of HMA.

c. Petition under Section 13(1)(1a) of HMA (which is transferred by this Court vide order dated 20.02.2023 passed in TA-217-2023 Annexure P-2).

v) that the petitioner has no source of income.

vi) that as per Section 9 of the Guardians and Wards Act, 1890, respondent has to file the petition for custody where the minor 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 Sonipat. Present petition for custody of the minor son has been filed by the respondent-husband under Sections 6 and 7 of the Guardians and Wards Act, 1890 read with Sections 6 and 13 of the Hindu Minority and Guardianship Act, 1956. 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, present petition deserves to be allowed. Moreover, petition filed by respondent-husband under Section 13(1)(1a) of Hindu Marriage Act has already been transferred to Sonipat by this Court vide order dated 20.02.2023.

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 filed by respondent-husband under Sections 6 and 7 of the Guardians and Wards Act, 1890 read with Sections 6 and 13 of the Hindu Minority and Guardianship Act, 1956, titled 'Gaurav Malik vs. Mrs. Aarti Antil' pending in the Court of Principal Judge, Family Court, Gurugram is transferred to a court of competent jurisdiction at Sonipat.
- b) The learned District Judge, Gurugram is directed to transfer complete record pertaining to the aforesaid case to District Judge, Sonipat.
- c) The parties are directed to appear before the District & Sessions Judge, Sonipat on 07.07.2023.
- d) The District Judge, Sonipat 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, Sonipat on 07.07.2023, 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.

19.05.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)

Judge