

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

103

**Transfer Application No.678 of 2023
Date of decision :-24.05.2023**

Raina Midha**.....Petitioner****Versus****Aman Midha****.....Respondent****CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kartik Gupta, 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/35/2023 filed by respondent-husband under Section 25 of the Guardian and Wards Act, 1890 read with Section 6 of Hindu Minority and Guardianship Act, 1956 (hereinafter referred as 'the Act'), titled "Aman Midha vs. Raina Midha" pending in the Court of Addl. Principal Judge, Family Court, Ludhiana to a Court of competent jurisdiction at Hoshiarpur.

2. Respondent has filed the above petition seeking custody of the minor daughter, namely, Amara Midha, aged about 6 years, who is currently residing with the petitioner at Hoshiarpur.

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

- i) that the parties solemnized marriage on 29.1.2016.
- ii) that a female child was born out of the wedlock on 09.4.2017.

- iii) that the petitioner along with minor daughter is living with her old aged mother at Hoshiarpur. The child is presently studying in Class K2 at Woodland Overseas School, Hoshiarpur.
- iv) that the distance between the place of residence and place of proceedings is 80 kms. (one side).
- v) that as per Section 9 of the Guardian and Wards Act, 1890, respondent has to file the petition for custody of the minor daughter where she ordinarily resides.
- vi) That the proceedings arising out of petition under Section 125 Cr.P.C. filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Hoshiarpur.
- vii) That a petition under Section 13 of the Hindu Marriage Act, filed by the respondent-husband at Ludhiana, has also been transferred to the Court at Hoshiarpur, by this Court vide order dated 04.5.2023 in TA-564-2023 (Annexure P-3).

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 Guardian and Wards Act, 1890, petition for custody is required to be filed where the minor child ordinarily resides. In the present case, minor daughter is admittedly residing with petitioner at Hoshiarpur.

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/35/2023 filed by respondent-husband under the Act, titled 'Aman Midha vs. Raina Midha' pending in the Court of learned 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 06.7.2023.
- d) The District Judge, Hoshiarpur 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, Hoshiarpur on 06.7.2023, 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.

24.05, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No