

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

103

**Transfer Application No.690 of 2023
Date of decision :-26.05.2023**

Kajol**.....Petitioner****Versus****Ankit Rana and another****.....Respondents****CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Govind Chauhan, 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/21/2023 filed by respondent No.1-husband under the Guardians and Wards Act, 1890 (hereinafter referred as 'the Act'), titled 'Ankit Rana vs. Kajol and another' pending in the Court of Addl. Principal Judge, Family Court, Karnal to a Court of competent jurisdiction at Ludhiana.

2. Respondent has filed the above petition seeking custody of the minor daughter, namely, Aaradhya, who is currently residing with the petitioner at Ludhiana.

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

- i) that the parties solemnized marriage on 08.02.2019.
- ii) that a female child was born out of the wedlock on 12.6.2020.
- iii) that the petitioner along with minor daughter is living with her parents at Ludhiana.
- iv) that the distance between the place of residence and place of proceedings is 190 kms. (one side).

- v) that as per Section 9 of the Act, 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 Ludhiana.
- vii) that the petitioner had filed a complaint before the Commissioner of Police, Ludhiana against the respondent and to avoid the proceedings, the respondent-husband had filed a petition under Section 9 of the Hindu Marriage Act at Karnal but in that matter, compromise was effected between the parties and respondent had withdrawn the said petition and order in this regard was passed by learned Additional Principal Judge, Family Court, Karnal, on 07.3.2022 (Annexure P-1).

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/daughter is admittedly residing with petitioner at Ludhiana.

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/21/2023 filed by respondent-husband under the Act, titled 'Ankit Rana vs. Kajol and another' pending in the Court of learned Addl. Principal Judge, Family Court, Karnal is transferred to a Court of competent jurisdiction at Ludhiana.
- b) The ld. District Judge, Karnal is directed to transfer complete record pertaining to the aforesaid case to District Judge, Ludhiana.
- c) The parties are directed to appear before the District & Sessions Judge, Ludhiana on 26.07.2023.
- d) The District Judge, Ludhiana 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, Ludhiana on 26.07.2023, 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.

26.05. 2023

Vijay Asija

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No

(NIDHI GUPTA)
JUDGE