

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

201

TA No.892 of 2022 (O&M)

Date of decision: 27.01.2023

Davinder Singh

...Petitioner(s)

vs

Simran and another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Ishita Jain, Advocate for the petitioner.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner husband is for transfer of the petition bearing No.GW/83/2022 filed by respondent No.1-wife under Section 25 of the Guardians and Wards Act, 1890, titled “Simran Kumar vs. Davinder Singh” pending in the Court of Principal Judge, Family Court, Jalandhar to a court of competent jurisdiction at Yamunanagar.

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

i) that the parties were married on 07.11.2011 according to Sikh rites and rituals.

ii) that two sons were born out of the wedlock.

iii) that the petitioner along with his minor children is living in Yamunanagar.

iv) that as per Section 9 of the Guardian and Wards Act, 1890, respondent No.1 has to file the petition for custody where the minor resides.

v) that the following cases are also pending between the parties at Yamunanagar:-

a. Petition under Section 125 Cr.P.C.

b. Complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

c. FIR No.1441 dated 02.12.2019 registered under Sections 406, 498-A, 323, 506, 120-B at P.S. City Jagadhri, District Yamuna Nagar.

d. Petition under Section 13-B HMA.

vi) that respondent No.1 is working at Jalandhar.

3. Mr. Sandeep Arora, Advocate, puts in appearance on behalf of respondent No.1 and files his vakalatnama, which is taken on record. Learned counsel has opposed the prayer made by the petitioner.

4. I have heard learned counsel for the parties.

5. The legal position in such like cases as the present one, is well established. As per Section 9 of the Guardians and Wards Act, 1890, petition for custody is required to be filed where the minor child ordinarily resides. In the present case, minor children are presently residing with the petitioner at Yamunanagar. Moreover, aforementioned cases are also pending at Yamunanagar.

6. Moreover, in matters arising out of matrimonial discord, it has been very categorically laid down by the Hon'ble Supreme Court in **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha, 2022 Live Law (SC) 627**, wherein the Hon'ble Supreme Court has held as under:-

“9. The cardinal principle for exercise of power under section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it

is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.”

7. After hearing the learned counsel for the parties and in view of the judgment **N.C.V. Aishwarya’s** case (supra) passed by the Hon’ble Supreme Court, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

a) The petition bearing No.GW/83/2022 filed by respondent No.1-wife under Section 25 of the Guardians and Wards Act, 1890, titled “Simran Kumar vs. Davinder Singh” pending in the Court of Principal Judge, Family Court, Jalandhar is transferred to a court of competent jurisdiction at Yamunanagar.

b) The Id. District Judge, Jalandhar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Yamunanagar.

c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Yamunanagar on 23.02.2023.

d) The District Judge, Yamunanagar will assign the said petition to the Court of competent jurisdiction.

8. The concerned Court at Yamunanagar will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.

9. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

Disposed of.

27.01.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge