

TA 1066/2022
2023:PHHC:036927

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA 1066/2022

Date of decision:27/02/20223

Sewa Singh

.....Petitioner.

Vs.

Sukhjeet Kaur

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sumeet Singh Brar, Advocate for the petitioner.
 Mr. Mandhir Singh Virk, Advocate for the respondent.

Nidhi Gupta, J.

Petitioner-husband by way of present petition u/s 24 read with Section 151 CPC is seeking transfer of Petition filed by respondent-wife u/s 6 of the Hindu Minority and Guardianship Act, 1965 and Section 25 of the Guardian and Wards Act,1890 bearing no. GW-09-2021 titled 'Sukhjeet Kaur v Sewa Singh' (Annexure P-1), along with application for execution as well as contempt filed in the above case, from the Court of Principal Judge, Family Court, Mansa at Camp Court, Sardulgarh, to any Family Court of competent jurisdiction, except District Mansa.

It is submitted by the Id. Counsel for the petitioner that the marriage between the petitioner and respondent was solemnized on 7.12.2011 at Fatehabad in simple manner. A male child, now aged 7 years, was born out of the said wedlock who is in the care and custody of the petitioner. It is alleged that the respondent-wife is persistently quarrelsome and soon after the marriage she started harassing the petitioner and his family members and was in the habit of leaving her matrimonial home without disclosing any reason to the petitioner or his family. It is further alleged that petitioner even approached respondent's parents to prevail upon her to mend her ways, but to no avail. Ultimately on the night of 23.7.2018, respondent left her matrimonial home and left the minor child with the petitioner. On enquiries made by the petitioner it was discovered that respondent had eloped with one Sarwan Singh as they were in extra marital relationship from long time. Moreover, even Sarwan Singh is having two children, and custody of the minor is being sought just to get maintenance in his name. Learned counsel also makes a mention of petition u/s 13-B of the Hindu Marriage Act filed by the parties to the present petition, which was however, dismissed as withdrawn by the respondent.

Transfer of the proceedings, noticed in opening para above, is sought on the ground that Id. Court below has passed an order dated 4.10.2021 (Annexure 5-A) whereby visitation rights have been granted to the respondent. It is submitted that said order dated 4.10.2021 is totally against the pleadings of the application filed by the respondent-wife and against which petitioner has preferred Civil Revision No.2716/2021 before this Court and in which respondent remains unserved as she continually keeps changing her address. It is submitted that the pendency of Revision

petition before this Court was brought to the notice of the Court below yet the Court below is proceeding with the contempt proceedings and thus “..... there are no chance of fair and impartial trial of the case on the basis of above-mentioned reasons....”

Upon notice, ld. Counsel for the respondent appears and states that petitioner is a drunkard person and not bringing up minor Harshdeep Singh in proper manner. He (petitioner) gives beatings to the minor without any reason and the minor is kept in a forcible manner. It is alleged that minor Harshdeep and respondent mother are having love and affection towards each other and that minor cannot live without the respondent and since the petitioner was not ready to handover custody of the minor to the respondent, latter took recourse to legal remedy by initiating proceedings, transfer of which is now being sought.

No other argument has been raised on behalf of the parties.

Heard ld. Counsel for the parties.

Operative part of the order dated 4.10.2021 (Annexure P-5A) reads as under:-

“By way of present application, petitioner Sukhjeet Kaur has requested for meeting her child as he is living in custody of the respondent. Petitioner being the natural mother of the minor child has right to visit him till the custody rights are decided by the Court. The counsel for the respondent has argued that the petitioner had solemnized 2nd marriage but merely solemnization of 2nd marriage does not dis-entitle the petitioner to have visitation right for meeting her child. No prejudice will be caused to the respondent if petitioner is allowed to meet her child, rather it would be in the welfare of the minor if he regularly meets both his parents, so application is hereby allowed. Respondent is directed to handover the custody of the minor child to the petitioner on

every 1st Sunday of the month and take him back in the evening. The child shall be handed over at 10 A.M. to the petitioner and it will be her responsibility to give the child back to the respondent at 4 P.M. on the same day. However, this order would not amount to reflection of my opinion on the merits of the case. Application is accordingly disposed of.”

In my view, the above reasoning given by the Court below while granting visitation rights to the respondent, in no way even remotely suggests that the Court below is prejudiced against the petitioner in any manner. The apprehension of the petitioner is misconceived warranting dismissal of the present Transfer Application.

Moreover, 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 child is admittedly residing with the petitioner at Mansa.

Accordingly, in view of the facts as noted above, this petition stands dismissed.

Pending application(s), if any, stand disposed of.

27/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No