

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.1184 of 2023 (O&M)
Date of decision: 14.09.2023

Sarjivan Lakhera & Anr.Petitioners
Versus
Nirmal KumarRespondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sita Ram Barvaria, Advocate
for the petitioners.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for transfer of the petition i.e. GW
No.13 of 2023, titled as “*Nirmal Kumar vs Sarjiwan Lakhera and
another*”, pending in the Family Court, Rewari to the competent Court
of jurisdiction at Chandigarh.

Counsel for the petitioners has submitted that the marriage
of the daughter of the petitioners namely Varsha Devi was solemnized
with the respondent Nirmal Singh and out of the wedlock, two children
were born. It is further submitted that the daughter of the petitioners
had died on 24.04.2022 immediately, after the birth of the second child
as she was not provided proper medical treatment by the
respondent/husband of Varsha Devi.

Counsel for the petitioners has further contended that both
the children are presently residing in the care and custody of the
petitioners, being the maternal grandparents at Chandigarh and even a
petition under Section 125 Cr.P.C. is filed before the competent Court at

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Chandigarh, claiming maintenance for the minor children namely Purvi and Ayush.

Counsel for the petitioners has also submitted that now the respondent has filed a petition under Sections 6 and 13 of the Hindu Minority and Guardianship Act, before the Principal Judge, Family Court, Rewari, for claiming the custody of both the children. It is also argued that in terms of Section (5) of the Hindu Minority and Guardianship Act, the provisions of Guardians and Wards Act shall apply to all the applications regarding the custody and under the Guardians and Wards Act, Section 9 provides that the jurisdiction to file a petition would lie at a place where the minor children are residing.

Lastly, counsel for the petitioners has submitted that admittedly, both the minor children are residing in the care and custody of the petitioners, who are the maternal grandparents, at Chandigarh, and the petitioners are facing great difficulty in prosecuting the aforesaid case as there is a distance of about 326 Kms from Chandigarh to Rewari.

After hearing the counsel for the petitioners, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioners 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 submissions made by counsel for the petitioners, this Court deem it

appropriate to allow the present petition, subject to the following conditions:-

- 1. *The petition i.e. GW No.13 of 2023, titled as “Nirmal Kumar vs Sarjiwan Lakhera and another”, pending before the Family Court, Rewari will be transferred to the competent Court of jurisdiction at Chandigarh.*
- 2. *The District Judge, Chandigarh, will assign the said petition to the competent Court of jurisdiction.*
- 3. *The Family Court, Rewari is directed to transfer all the record pertaining to the aforesaid case to District Judge, Chandigarh.*
- 4. *The parties are directed to appear before the trial Court, Chandigarh, within a period of 01 month from today.*
- 5. *The Family Court, Chandigarh 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.*
- 6. *The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.*

However, liberty is granted to the respondent to revive this petition, if he intent to contest the same, provided that:-

- (a) *The respondent will clear all arrears of maintenance amount, if any, in terms of a petition filed by the petitioners under Section 125 Cr.P.C.*
- (b) *The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioners for attending the Court proceedings at Rewari, on each and every date of hearing.*
- (c) *The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Rewari in case the respondent opt to contest this petition.*

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

14.09.2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No