

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101 TA-268-2024 (O&M)
Date of decision: 22.03.2024

Nitin Diwan ...Petitioner

Versus

Rajni Bhatia @ Rajni Diwan @ Aradhna Diwan ...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. J.S. Ghumman, Advocate for the petitioner.

VIKAS SURI, J. (Oral)

CM-4343-CII-2024

This is an application for placing on record orders dated 27.03.2019 and 06.02.2024 as Annexures A-1 and A-2.

For the reasons mentioned in the application supported by affidavit and in view of the order dated 01.03.2024 passed in the main petition, the same is allowed. Annexures A-1 and A-2 are taken on record, subject to all just exceptions.

CM stands disposed of.

TA-268-2024

1. Prayer in the present petition is for transfer of the petition filed by the respondent-wife under Sections 7, 8, 17 and 25 of the Guardians & Wards Act, 1980 (for short 'the Act'), seeking custody of the minor male child namely Tanmay Diwan (DOB 04.05.2015) titled as

Rajni Bhatia @ Rajni Diwan @ Aradhna Diwan vs. Nitin Diwan, pending before learned Principal Judge, Family Court, Jalandhar to a Court of competent jurisdiction at Ludhiana.

2. The ground pleaded in the petition seeking transfer rests sole reliance upon the provisions under Section 9 of the Act. It is submitted that the minor has been residing with the petitioner at Ludhiana. It is further submitted that earlier the petitioner had filed a petition under Sections 7 and 8 of the Act at Ludhiana, which at the instance of respondent-wife had been transferred to Jalandhar vide order dated 27.03.2019 passed in TA-734-2018. However, after the aforesaid petition was transferred from Ludhiana to Jalandhar, the petitioner had withdrawn the same.

3. Subsequently, the respondent-wife seeking custody of the minor child moved a petition under Sections 7, 8, 17 and 25 of the Act, before the family Court, Jalandhar.

4. I have heard learned counsel for the petitioner and have gone through the material available on record with his able assistance.

5. It is apparent from the record that the earlier petition filed by the petitioner under the same Act, which was instituted before the Guardian Court at Ludhiana was transferred by this Court to a Court of competent jurisdiction at Jalandhar, keeping in view the ratio of judgments in *Tejbir Singh vs. Baljit Kaur*, in CR-7257-2018 decided on 02.11.2018; *Tarun Bansal @ Sonny vs. Neelam Rani*, 2015(1) PLJ 696; *Apurva vs. Navtej Singh*, 2017(2) Law Herald 966; and two judgments of the Apex Court in *Sumita Singh vs. Kumar Sanjay and*

another, AIR 2002 SC 396 and *Bhartiben Ravibhai Rav vs. Ravibhai Govindbhai Rav*, 2017(3) RCR(Civil) 369, vide order dated 27.03.2019 (Annexure A-1). After the said earlier petition having been withdrawn by the petitioner, the respondent-wife filed the present petition before the same Guardian Court/Family Court to which the earlier proceedings were transferred.

6. Dismissal of the said petition moved by the respondent-wife was sought by moving an application under Order 7 Rule 11 CPC. In the said application, the plea of jurisdiction with regard to Section 9 of the Act was made the basis. Upon notice of the said application, the same was opposed by the respondent-wife by filing written reply thereto. The said application was dismissed vide order dated 06.02.2024, by observing as under:-

“Perusal of the file reveals that the instant petition has been filed by petitioner-wife against the respondent-husband, seeking custody of the minor son namely, Tanmay Diwan, under Section 7 and 8 of Guardians and Wards Act. Learned counsel for the petitioner has relied upon the order dated 27.03.2019, passed by Hon'ble High Court, wherein the petition under Sections 7 and 8 of Guardians and Wards Act, 1890 filed by respondent-husband, against the petitioner-wife, was ordered to be transferred to the Family Court at Jalandhar, for disposal in accordance with law. From the bare perusal of order dated 27.03.2019, passed by Hon'ble High Court, it transpires that similar situation surfaced in the year 2019, when the petition under Section 7 and 8 of Guardians and Wards Act, was filed by respondent-husband before the Court of Guardian Judge, at Ludhiana. In the aforesaid

order, the Hon'ble High Court took into consideration, various factors, including the financial status of the wife and the convenience of the wife, in such like disputes and observed that it would be difficult for the applicant-wife, Rajni Bhatia to travel from Jalandhar to Ludhiana to attend the dates of hearings in the said petition filed by respondent-husband. It is conceded by both the counsels that the aforesaid petition filed by respondent-husband has been withdrawn by him, before learned Family Court, at Jalandhar.

Though, it is the settled law that the competent Court having jurisdiction to entertain such petition, would be where, the minor actually resides, but other facts and circumstances are also to be taken into consideration. It has also come on record that the other litigations, between both the parties are pending before the Family Courts at Jalandhar. Thus, the facts and circumstances of the present case warrant that the present petition should be tried by this Court only, in view of the order dated 27.03.2019 passed by Hon'ble High Court. The petitioner- wife cannot be relegated to file the petition, seeking custody of the minor child, at Ludhiana and then to get the same transferred to the Family Court at Jalandhar.

Thus, keeping in view of arguments advanced, facts and circumstances stated above and observations made by Hon'ble High Court in the order dated 27.03.2019, the ends of justice would meet when the instant petition is tried by Family Court, at Jalandhar. Hence, no justifiable ground is made out to reject the petition at this stage, as such, the instant application is being bereft of any merits, is hereby dismissed.”

7. On a query of the Court, it is fairly conceded that the aforesaid order dated 06.02.2024 has not been challenged by the

petitioner-husband.

8. In the light of above, I am of the considered opinion that having failed in an application under Order 7 Rule 11 CPC to secure return of the petition on the ground of jurisdiction, the same argument of lack of jurisdiction cannot be raised in a petition seeking transfer of the proceedings from Jalandhar to Ludhiana, while having accepted the finding recorded in the order dated 06.02.2024 and by not seeking judicial redress against the same.

9. Resultantly, in view of the above discussion and finding no merit in the present petition, the same is dismissed.

March 22, 2023
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No