

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

Sr. No.121+240

**TA-491-2024 (O&M)
Date of Decision: 26.09.2024**

ANNEY

....Applicant

Versus

UMESH SINGLA

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Anupam Singla, Advocate
for the applicant.

Dr. Rau P.S. Girwar, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)**CM-16964-CII-2024**

The present application has been filed for placing on record the reply, by way of counter-affidavit of the respondent.

In view of the averments made in the application, same is allowed and the requisite reply is taken on record.

Main case

The applicant-wife has filed the present application for seeking transfer of the petition under Section 13 of the Hindu Marriage Act i.e. DMC/142/2024, titled '*Umesh Singla Vs. Anney*', filed by the respondent-husband, pending in the Family Court, Bathinda and she seeks transfer of the same to the Court of competent jurisdiction at Samana, District Patiala.

In pursuance of the notice issued, respondent made appearance through counsel filed reply, in the form of affidavit of the respondent.

Learned counsel for the parties heard.

It is submitted by the counsel for the applicant that the marriage had taken place between the parties to the lis, on 19.02.2012. However, on account of the matrimonial discord, the parties are residing separate. The son born from the said wedlock, who is aged about 8 years, is in the care and custody of the applicant. Also, it is submitted that, earlier the respondent-husband had filed the petition under Section 25 of the Guardians and Wards Act in the Family Court, Bathinda. However, in pursuance of filing of transfer application i.e. TA-1026-2022, the guardianship petition was transferred from Bathinda to the Court of competent jurisdiction at Samana, District Patiala. Copy of the order dated 13.09.2022 passed by this Court in the transfer application, is Annexure P-3. Besides the same, it is submitted that there is no other litigation between the parties. The applicant is a housewife and has no source of earning.

On the other hand, the counsel for the respondent, while making reference to reply by way of affidavit of the respondent, has resisted the claim for transfer of the divorce petition. In fact, it is submitted that in pursuance of transfer of the guardianship petition, which is pending in the Courts at Samana, the applicant is not making appearance and delaying the matter, for one reason or the other. Copies of the zimini orders, passed by learned Family Court are Annexures R-1 to R-15. As such, it is submitted that the applicant, only intends to delay the litigation between the parties and for this purpose only, the present application has been filed.

In view of the submissions made by the counsel for the parties, it is pertinent to mention that weightage ought to be given to the convenience of the wife, in case of transfer applications relating to the matrimonial dispute. In the case in hand, the applicant is having no source of earning and also, the minor child is in her care and custody.

Taking into consideration the aforesaid factual position, it is quite obvious that it is difficult for the applicant to commute a distance of about 140 kilometres, to defend the divorce petition. Simultaneously, it is also important to make reference to the plea of delay, being caused at the behest of the applicant. Copies of the zimini orders passed in the guardianship petition, have been placed on record as Annexures R-1 to R-15. However, though the plea is about the applicant not making appearance, after the transfer of the guardianship petition, but however, the same is not evident from the zimini orders. In fact, none of the parties had made appearance in the custody petition, in person and they are represented through counsel. Even, the counsel for the respondent has made a prayer for the matter to be referred to the Mediation and Conciliation Centre, in compliance of the condition No.5 of the order dated 13.09.2022 passed by this Court in TA-1026-2022, copy whereof is Annexure P-3.

If the parties incline to arrive at an amicable settlement, on the asking of any of the counsel, appearing for the applicant or the respondent, they may make a prayer for reference of the matter to the Mediation Centre before the Court concerned and the Court concerned, shall take into consideration the chances of amicable settlement between the parties and proceed further.

But anyhow, in view of the observations made aforesaid, the

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application is hereby accepted and the petition under Section 13 of the Hindu Marriage Act i.e. DMC/142/2024, titled '*Umesh Singla Vs. Anney*', filed by the respondent-husband, stands transferred from the Family Court , Bathinda, to the Court of competent jurisdiction at Samana, District Patiala. The requisite record of the aforesaid case be sent by the Family Court, Bathinda, to the District and Sessions Judge, Patiala.

Learned District and Sessions Judge, Patiala shall assign the said petition to the Family Court (Camp Court) Samana. Even, the parties are directed to appear before the Family Court (Camp Court) Samana, within a period of one month from today onwards.

26.09.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No