



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

Sr. No.104**TA-773-2024****Date of Decision: 17.09.2025****DIVYA****....Applicant****Versus****HARDIK ATORIA****.....Respondent****CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present:- Ms. Vibha Nagar and Mr. Dinesh Nagar, Advocates
for the applicant.

Mr. Rajesh Gupta, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the petition under Section 13 of the Hindu Marriage Act i.e. HMA/173/2023, titled '*Hardik Atoria Vs. Divya*', filed by the respondent-husband, pending in the Family Court (Camp Court) Khanna, District Ludhiana and she seeks transfer of the same to the Court of competent jurisdiction at Chandigarh.

In pursuance of notice issued, the respondent made appearance through counsel and filed reply.

Counsel for the parties heard.

At the very outset, it is submitted by the counsel for the applicant that there is a matrimonial dispute between the parties, as a result



whereof, they are residing separate. However, on 05.05.2022, the applicant was turned out of the matrimonial house, besides snatching the custody of the minor son born from the said wedlock. Also, it is submitted that the applicant is not having any source of earning. Even, she has filed the petition under Section 125 Cr.P.C., which is pending in the Courts at Chandigarh, at appearance stage. Further, it is submitted that a criminal complaint against the respondent-husband, under Sections 406 and 498-A IPC, was got lodged by the applicant at Women Cell, Chandigarh. Though, at the time of filing of the transfer application, the said complaint was under process, but however, due to arrival of compromise, during the pendency of the said application, the complaint was not processed and as such, had been filed.

Counsel for the applicant, while making reference to various zimini orders recorded in the present application, submits that compromise had earlier been effected between the parties and the applicant, as well as the son, resided with the respondent. However, again, the parties parted ways and the respondent had retained the custody of the son. In the given circumstances, it is submitted that it is difficult for the applicant, to commute a distance of about 140 kilometres, to defend the divorce petition.

On the other hand, counsel for the respondent refuted the claim for transfer of the divorce petition. In fact, it is submitted that it was only on account of bad conduct of the applicant, that the parties are residing separate. In fact, the child was in the custody of the applicant, which she had not disclosed and in this regard, counsel has made reference to the statement of applicant-Divya, copy whereof is R-1 and submitted that this



statement was got recorded before the police authorities. Therein, the applicant has categorically stated about the child staying with her, for the last three years. In the given circumstances, it is submitted that the child was never snatched by the respondent. In fact, in pursuance of arrival of compromise, the applicant had again gone away from the matrimonial house and she had left the son with the respondent. In the light of the same, it is submitted that solely on account of wrongful conduct of the applicant, she is not entitled to seek transfer of the divorce petition.

In view of the rival submissions aforesaid, it is pertinent to mention that generally, the Courts given weightage to the convenience of wife, in case of transfer application relating to the matrimonial dispute, though the same may not be a thumb rule. However, the various other circumstances, spelt out from the material brought on record, ought to be taken into consideration. The present case relates to the matrimonial dispute and it is a known fact that while such proceedings are pending before the Courts, efforts are always made with the intervention of the Court, or of the respectable persons of the society, for reaching amicable settlement between the parties. Perusal of the zimini orders passed by this Court, from time to time, during the pendency of the present application, reveals that compromise had in fact taken place between the parties and they had also resided together, for some period of time. However, thereafter again, they had parted ways, as evident from the order dated 07.07.2025. Somewhere in the order dated 26.08.2025, it was noticed that the respondent had retained the son, who was in the custody of the applicant. In the application, there is a mention made about snatching of the child, by the respondent on



05.05.2022, when she was moved out of the matrimonial home.

Considering the same, on query by this Court, it has been disclosed by the counsel for the applicant that it was in the subsequent oral compromise, that the custody of the son happened to come to the applicant and consequently, at the time, when arrival of compromise was there, the applicant had gone to the house of the respondent, but thereafter, when they parted ways, the child was retained by the respondent. Though, much emphasis has been laid upon the statement of the applicant, copy whereof is Annexure R-1, but however, on query by this Court, counsel for the respondent was unable to state about the manner of recording of the statement. No document, as such, of the recording of statement before the police authorities, has come on record. Counsel for the respondent has stated that it was only on account of the application, filed at the instance of the respondent, while apprehending some untoward incident, after the compromise was reached between the parties, during the pendency of this application, that the said statement was recorded. Though in the translated copy, there is no mention made about the signatures having affixed by both the applicant, as well as the respondent, but however, vernacular copy of the statement is also there, which reveals about the statement to be signed by both of them, but it is not signed by any police officer/official, who recorded the said statement. In fact, the application moved by the respondent, has not come on record. In the given circumstances, it shall not be appropriate to rely upon this statement, to conclude about the custody of the child.

The fact remains that the child, at present, is in the custody of the respondent. Also, it be noted that on the last date of hearing, it was



observed about retention of custody of the child with the respondent, as observed in the order dated 26.08.2025. Thereupon, the applicant was asked to take custody of the child and she expressed her disinclination to take the custody. However, statement was given in this regard, that it shall be difficult for her to upbringing the child.

In view of the aforesaid fact situation, more particularly, considering the fact about the applicant, having no source of earning and her helplessness and also considering the fact of other litigation, arising from the matrimonial dispute, already pending in the Courts at Chandigarh, it is just and expedient to accept the application. Hence, the transfer application is allowed and the petition under Section 13 of the Hindu Marriage Act i.e. HMA/173/2023, titled '*Hardik Atoria Vs. Divya*', filed by the respondent-husband, stands transferred from the Family Court (Camp Court) Khanna, District Ludhiana, to the Court of competent jurisdiction at Chandigarh. The requisite record of the aforesaid case be sent by the Family Court (Camp Court) Khanna, to the District and Sessions Judge, Chandigarh.

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

17.09.2025
Himanshu Vats

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No