

SUPREME COURT OF INDIA

Nimisha Batish

Vs.

Maj. Ajay Batish

Transfer Petition(C) No. 726 of 2008

(R.V.Raveendran and D.K.Jain JJ)

12.12.2008

ORDER

1. The petitioner is the wife and the respondent is the husband. The respondent has filed a petition under Section 6 of the *Hindu Minority and Guardianship Act* read with Section 25 of Guardianship and Ward Act for custody of the minor son against his wife, in the Court of Civil Judge (Senior Division), Gurgaon.

2. The petitioner-wife is permanently residing at Mumbai. She has filed this petition seeking transfer of the above-mentioned case from Gurgaon to Mumbai. The objection of the respondent is that in another transfer petition relating to a then pending divorce proceedings, the parties had entered into compromise agreeing for divorce by mutual consent and one of the terms of the said compromise was that the case of custody of minor son shall be decided by Gurgaon court; and that, therefore, the Court at Gurgaon shall alone decide the matter. When the terms of the said compromise are read, it is clear that the intention was not to confer exclusive jurisdiction on the Civil Judge (Senior Division), Gurgaon where the custody dispute was pending, but to merely express that there was no compromise in regard to that issue and that since the guardianship case was pending in the Gurgaon Court it shall be decided by that Court. Admittedly, neither party is staying at Gurgaon. The petitioner is residing at Mumbai and the petitioner is posted abroad. In fact, it will be more convenient for the respondent to come to Mumbai to prosecute the matter than to go over to Gurgaon.

3. Having regard to the difficulties faced by the petitioner having a minor son to travel from Mumbai to Gurgaon for every hearing and having regard to the fact that the respondent himself is not residing in Gurgaon, we are of the view that this is a fit case for transfer as prayed for. Accordingly, we direct that Petition No.420/2006 titled Major Ajay Batish & Ors. Vs. Smt. Nimisha Batish pending in the Court of Learned Civil Judge (Senior Division), Gurgaon be transferred to the Family Court, Mumbai. Transfer Petition is allowed accordingly.