

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R No.1630 of 2015

Date of Decision.09.03.2015

Amandeep Sharma and others

.....Petitioners

Versus

Shweta Pathak

.....Respondent

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Ramandeep Singh, Advocate
for the petitioners.

Mr. Nakul Sharma, Advocate
for the caveator.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The revision is against the order passed by the District Judge in exercise of jurisdiction under the Guardian and Wards Act. In the petition for custody of the daughter and son who were 6 ½ years and 2 years 10 months respectively, the wife has sought for custody of the son contending that the son was not being properly looked after. The Senior Counsel would point out that even the Court below has found that this is not true statement. According to him, it is only appropriate that the siblings must be together and the mother can have appropriate visitation to the child which is in the custody of the father.

2. As regards the custody of a child, the paramount consideration is always welfare of the child and a child of tender years even less than three years old ought to know the immediate affection

and love of the mother and in my view, child will be better off in the immediate care of the mother than the father. This is not to undermine the love of the father. Even the law recognizes under Section 6 of the Hindu Minority and Guardianship Act a predominant right to custody of child less than five years with the mother. The exception will be by applying a welfare criterion. So long as there is nothing made out against the mother, she cannot be denied the custody of the child which is less than even three years. I will find, therefore, no reason to make an intervention in favour of the petitioner-father that he shall retain the custody if only it means that the child is along with the daughter.

3. The wife herself has not come before this Court with any prayer for custody of the daughter and therefore, there is no scope for me to consider whether the daughter and the son must be together. If choice were to be whether the son and daughter must be together or son and mother to be together, there is no doubt that the son is better off with the mother than the daughter. The Senior Counsel appearing for the petitioner says that the mother can even have longer visitation right for the daughter if only it would mean that the son is retained with the father. This can be considered by the Court below independently of the order that I have confirmed. Along with allowing for the mother to get the custody of the son through the Court order, it will be appropriate if any application is moved at the instance of the mother to allow for what the learned counsel is arguing for that the daughter and son must be together. The mother can also approach the Court for appropriate directions for increased hours or number of days of custody for the daughter to make possible longer companionship between the

siblings. All orders passed in respect of custody issues are invariably interim in nature, be it actually termed interim orders or final orders. Therefore, the parties can assert their own rights before the trial Court and I find no reason to monitor the same in the revisional jurisdiction.

4. The revision petition is dismissed with above observations.

(K. KANNAN)
JUDGE

March 09, 2015
Pankaj*