

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 2157 of 2015 (O&M)

Date of Decision: May 25, 2015

Sukhjeet Kaur

.....Petitioner

Vs.

Gurmeet Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

-. -

Present:- Mr. S.K. S. Bedi, Advocate
for the petitioner.

-. -

M.M.S. BEDI, J. (ORAL)

This is a petition under Article 227 of the Constitution of India requiring this Court to exercise supervisory and revisional jurisdiction against the order dated December 16, 2014 passed by Additional Civil Judge (Sr. Divn.), Tohana, exercising the powers of District Judge under Guardian and Wards Act, 1890 declining to grant any relief to the mother pertaining to the custody of minor child Navneet Kaur aged 4 years whose custody had been handed over to the husband- respondent while parting company from her husband on receipt of lumpsum amount of compensation/ alimony under Section 13 B of the Hindu Marriage Act. Learned trial Court has held that

the applicant is not entitled to the custody of her minor daughter on account of extraneous circumstances.

Matter was referred to the Mediation and Conciliation Centre. Notice was issued to the respondent repeatedly by mediators and Registry but respondent has been able to evade appearance before the Mediation and Conciliation Centre or this Court compelling this Court to adjudicate the matter ex-parte.

I have gone through the facts and circumstances of this case and I am of the opinion that irrespective of the statutory provisions mentioned in the petition before the Guardian Judge, its maintainability or availability of any alternative remedy, this Court is of the considered opinion that in view of the ratio of the judgment in **Gippy Arora Vs. State of Punjab and others**, Cr.W.P. No. 543 of 2008, decided on November 25, 2008, the lap of the mother is the best place for a minor child and a mother cannot be deprived of her legal right of custody/ interim custody or the company of a child. Mere consent of a lady at the time of seeking annulment of marriage with mutual consent cannot deprive her of the statutory right to claim the custody of the child, in view of peculiar circumstances when the husband has re-married. In that context, reference can be made to **Surabhai Ravikumar Minawala Vs. State of Gujarat**, 2005 (2) RCR (Civil) 822 wherein it was held that no amount of wealth could take place of mother's care and love. The said judgment was followed by this Court in **Gippy Arora's** case (supra).

The order dated December 16, 2014 is patently an illegal order and deserves to be set aside even if any statement had been made by mother at the time of getting divorce from the husband on mutual consent on receipt of permanent alimony. The said statement will not, in any manner, prejudice her application for custody of the child.

The petition is allowed. The order dated December 16, 2014 is hereby set aside. A direction is issued to the trial Court to reconsider the application for interim relief and pass an appropriate order either for granting interim custody to the petitioner or in the alternative visitation rights or interim temporary custody to the petitioner without prejudicing the right of a father to have visitation rights. It will be advisable in the circumstances of the present case to make an attempt to refer the matter to the mediation and adhere to the statutory provisions of Order 32 A Rule 1 (2) (c) and Rule 3 CPC. It is directed that the final decision shall be taken within a period of one month after the receipt of a certified copy this order. However, it is clarified that it will be open to the trial Court to exercise its discretion, wisdom and legal authority to ensure that the minor child remains in touch/ contact/ custody of the mother irrespective of her consent made in any proceedings.

It is made clear that if it is found that the petitioner has availed any other remedy and has concealed the same, this order will be liable to be recalled.

May 25, 2015
sanjay

(M.M.S.BEDI)
JUDGE