

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.5533 of 2015

Date of decision: December 01, 2015

Maninderjit Kaur Atwal

.....Petitioner

versus

Barinder Singh Pannu

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.Ajaivir Singh, Advocate for the petitioner
Mr.G.P.S. Bal, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated May 15, 2015 (Annexure P5), passed by the Guardian Judge, Ludhiana, vide which, pending the petition under Section 26 of the Guardian and Wards Act, 1890, for appointment of the petitioner Maninderjit Kaur Atwal as guardian of her minor son, namely, Aalamnoor Singh Pannu now aged about 15 years approximately and daughter, namely, Amreen Kaur Pannu, now aged about 13 years approximately, an application was filed by Maninderjit Kaur Atwal for permission to take said Aalamnoor Singh Pannu and Amreen Kaur Pannu to USA for vacations.

The admitted facts of the case are that both the said

minors are USA citizens by birth. It is also not denied that a matrimonial dispute arose between Maninderjit Kaur Atwal and her husband Barinder Singh Pannu, who happens to be doctor by profession. It is also not disputed that a divorce has already been granted by United States Court. Terms and conditions of divorce were also mutually settled between the parties. The petitioner was earning USD 2,79,000 per year. Under the divorce settlement, she is paying USD 2200 per month w.e.f. November 01, 2010 to Barinder Singh Pannu for the upbringing of the children. In the divorce proceedings, Barinder Singh Pannu had shown his salary as USD 11,199.66 per year. The Superior Court, California, USA had ordered that children can be taken to USA for visiting the petitioner at her expenses. The divorce was granted by Superior Court, Country of Sutter, California, USA vide order dated 3rd November 2010. The same was registered on 5th November 2011. The grouse of the petitioner is that the respondent-husband has failed to honour the stipulations submitted on 3rd November 2010 in the US Superior Court.

The lower Court declined the application on the ground that USA has no bilateral agreement with India to enforce the return of children to India in case the petitioner refused to send the children back. It was observed that India is not signatory to the Hague Convention and there is no international agreement between USA and India in this regard. It was also observed that the respondent has the managerial capacity to look after the children. It was observed that the children are studying in prestigious school in Ludhiana in higher

classes and compelling them to go to USA to meet their mother will have adverse effect on their education.

I have heard learned counsel for the parties and have also carefully gone through the file.

Undisputedly, the divorce between the parties has already taken place. A copy of settlement, arrived at between the parties duly signed by both the parties on 3rd November 2010, is on file, indicating that parties agreed to certain terms and conditions while dissolving the marriage. The Indian Courts were given jurisdiction over the children custody and visitation rights. It was further agreed that the children shall reside with their father and as per one of the conditions, the mother shall have the children in California for four weeks during their summer break. The actual dates are to be agreed upon 90 days in advance. The said conditions were given effect to in the order of the Superior Court of United States of America. It is also not denying fact that the mother has been ordered to pay USD 2200 per month for the upbringing and the education of the children, who are now studying at the Ludhiana, on the ground that father is not having sufficient income. The divorce had taken place on 3rd November 2010. The prayer of the petitioner is to enforce the conditions agreed between the parties for visit of children to the mother to USA during summer vacations. An application filed by the mother-petitioner to this effect was dismissed by the lower Court on the grounds recorded above.

I am of the view that the apprehensions of the learned Guardian Judge are unfounded. The children are US Citizens by

birth. Therefore, for their mental and emotional developments, it is required that they should visit their motherland and be acquainted with its environment and also meet their mother. So far as apprehension of the learned Guardian Judge is concerned that the Court will not be able to enforce the return of the children as there is no bilateral agreement between United States and India and that India is not party to the Hague Convention, I am of the considered view that law enforcement is much effective in USA and the rights of the children are duly protected. Moreover, the decree incorporating the settled conditions was passed by the US Court and in case of violation, the same can always be enforced by US Court or the Police Department of USA. In order to allay the fear of the respondent, certain conditions can be laid down to ensure the safety of the children and their safe return, as per order of this Court. The mother petitioner has agreed to bear the traveling expenses of the children and also their boarding and lodging expenses and ensure their safe return on the date ordered by this Court.

This Court has been informed that children have winter vacations from December 22, 2015 to January 2, 2016. The petitioner-mother will be satisfied if the children are sent to meet her during the said period and thereafter during summer vacations every year for two weeks in June, excluding the traveling time.

In view of the matter, the impugned order dated May 15, 2015 (Annexure P5), passed by the Guardian Judge, Ludhiana is not sustainable in the eyes of law and is hereby set aside.

The revision is allowed and the following order is passed:-

1. Minors Aalamnoor Singh Pannu and Amreen Kaur Pannu shall visit their mother in USA during winter vacations from December 22, 2015 to January 1, 2016 and stay in the house of their mother.

2. The traveling expenses of the children shall be borne by the petitioner -mother. Tickets shall be sent by email to the father. Further, email of the children, if they have any, will also be provided and a separate copy of the ticket be sent on the said email of children also.

3. Respondent-father shall accompany the children upto USA and the children shall be handed over to the mother at the Airport and thereafter on the date of their return journey, they will join their father at the Airport. However, father will make his own arrangement for his tickets and residence in USA. Father will not create any scene at the Airport.

4. Both the children shall be provided mobile phones by the petitioner-mother so that if they have any safety concern or any problem, they can contact the police on 911 in USA.

5. The petitioner shall also furnish an undertaking by fax before the lower Court mentioning her account numbers authorizing the Court that in case she does not comply with the conditions imposed by this Court, the Court is authorized to recover one lac USD from her accounts and pay as compensation to the minor children or in the alternative she can furnish local surety to the tune of Rs.66 lac.

6. Similarly, on the same terms and conditions, both the minor children shall also visit their mother during summer vacations in June 2016 and every year thereafter for two weeks excluding the

journey time and the convenient dates will be supplied by the respondents to the petitioner 60 days before the month of June.

This order can be enforced by USA police or by the USA Courts subject to the law of the USA.

December 01, 2015
gk

(Kuldip Singh)
Judge