

CR No.815 of 2015

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

**CR No.815 of 2015
Date of decision:06.02.2015**

Amandeep Sharma and others ...Petitioners

Versus

Shweta Sharma Pathak ...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Alok Mittal, Advocate,
for the petitioner.

Mr. Nakul Sharma, Advocate,
for the respondent-caveator.

Rakesh Kumar Jain, J.

The petitioners are aggrieved against the order dated 28.01.2015 whereby application filed by the respondent for placing on record declaration under Section 10(3) of the Guardian and Wards Act, 1890 (here-in-after referred to as the “Act”) was allowed and application filed by the petitioners for dismissal of the petition filed by the respondent under Section 25 of the Act, being not maintainable for want of declaration, has been dismissed.

In brief, the respondent filed the petition under Section 25 of the Act for declaring her as a natural guardian of minor female child Harshil Sharma and minor male child Yuvraj Sharma and for her entitlement to their custody. It was averred in the petition that female child Harshil was born on

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22.09.2008 and male child Yuvraj was born on 18.06.2012 and are presently residing at House No.67-B, Model Town, Patiala. She is the mother of the minor children and is presently residing at Mandi Gobindgarh, District Fatehgarh Sahib. The petition was contested by the petitioners who happen to be the husband and parents-in-law of the respondent.

During the pendency of the petition, the respondent filed an application for placing on record declaration, as required under Section 10(3) of the Act, and the petitioners filed an application for dismissal of the original petition filed under Section 25 of the Act on the ground that the respondent had not complied with the provisions of Section 10(3) of the Act which requires a declaration of her willingness, duly witnessed by two witnesses, to act as a guardian of the minors.

The trial Court allowed the application of the respondent and dismissed the application of the petitioners and hence, the present revision petition.

Learned counsel for the petitioners has argued that the petition filed under Section 25 of the Act was not maintainable in the absence of a declaration, as provided under Section 10(3) of the Act. In support of his submission, he has relied upon a decision of the Jammu and Kashmir High Court in the case of **Mst. Aisha and another v. Bashir Ahamad Haji**, 1987 AIR (J&K) 68.

On the other hand, counsel for the respondent-caveator has submitted that the Court can permit the applicant to comply with the requirement of Section 10(3) of the Act at any stage of the proceedings and

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relied upon the following judgments:-

1. **Vishnu v. Bhanumathy Amma**, 2000(1) R.C.R. (Civil) 329;
2. **Rabindra Nath Mukherjee v. Abinash Chandra Chatterjee**, AIR 1972 Calcutta 143; and
3. **Narotam v. Mr. Tapersra and another**, AIR 1934 Allahabad 849.

I have heard learned counsel for the parties and perused the record.

Section 10(3) of the Act reads as under:-

“(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act, and the declaration must be signed by him and attested by at least two witnesses.”

In the present case, the petition under Section 25 of the Act has been filed by none-else than the natural mother of the minor children. Both the minor children are less than six years. According to Section 6 of the Hindu Minority and Guardianship Act, 1956, the natural guardian of such a minor, who is below the age of 5 years, is always the mother and the Court has to see the welfare of the child.

In the present case, the issue raised by the petitioners is that whether the petition filed under Section 25 of the Act was maintainable in the absence of declaration required to be filed under Section 10(3) of the Act.

In this regard, the trial Court, while relying upon a decision of this Court in **Rabindra Nath Mukherjee's case (supra)**, has held that the said provision is only directory and in **Narotam's case (supra)**, it has been held that the Act even envisages the appointment of a person who has not even applied for being so appointed, therefore, non-compliance of Section 10(3) of the Act does not bar the jurisdiction of the Court.

The judgment relied upon by learned counsel for the petitioners in **Mst. Aisha and another's case (supra)** only says that if the objection is not raised at the time of hearing of original petition, it cannot be raised in appeal, whereas in **Vishnu's case (supra)**, relied upon by learned counsel for the respondent, it has been held that the Court has the discretion to give an opportunity to the party to comply with the provisions of Section 10(3) of the Act if the application has already been entertained by the Court.

In the present case as well, the petition under Section 25 of the Act has already been entertained by the Court and it has rightly exercised its discretion in allowing the application filed by the respondent under Section 10(3) of the Act during its pendency and has rightly dismissed the application filed by the petitioners for dismissal of the original petition on the ground of its non-compliance.

In view thereof, there is hardly any reason for this Court to interfere in the impugned order and hence, the present revision petition is hereby dismissed being denuded of any merit.

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