

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

C.R. No.8360 of 2015 (O&M)

Date of Decision.09.12.2015

Vinod Kumar

.....Appellant

Vs.

Smt. Riya

.....Respondent

Present: Mr. Atul Gaur, Advocate
for the appellant.

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 petition is against the order directing interim custody of the child to the mother . The child is 3 ½ years of age. There is an obvious stand off between the father and mother of the child and there has been some settlement brought about before the police where the wife is reported to have stated that she was living alone and that she has admitted that she has gone away from the house with another gentleman who is not a spouse. This according to the husband would show that the wife cannot be a suitable person for taking care of the child. The husband's contention also is that he is living with his parents and the parents can also give sufficient support and love for a child if the child is continued to be with him. The Court below has allowed for interim custody of the child to the mother. The father is aggrieved and is before this Court to contend that the order has been passed without taking note of the precarious financial condition of the

mother and the fact that she is living with yet another person.

2. Right to interim custody is invariably taken on the prima facie inference that is possible about what will subserve interest of justice and the welfare of the child. A mother is indisputably the most eminent person for taking care of a child and more so when it is a female child of 3 ½ years. It is not as if the mother of the child is not working or she is in impecunious condition. She seems to be supporting herself by working and she will, therefore, be in a sound position to protect the child. It will be no argument that the wife has run away from the house and therefore, she will be incompetent to take care of the child. The conduct of the mother must be such as to make possible an inference that the mother is depraved or living in such an amoral life that it can be a serious dent to a child's growth at an impressionable age. A child at 3 ½ years would require all the warmth of love of mother and it will be an utter travesty of justice to deny to her the interim custody. The argument that the petitioner has his parents and sister-in-law to give him support for taking care of the child cannot really be a better preference. One is relatively old and an aunt cannot get even to a mother in terms of filialty to the child. The pre-eminent position of mother as a guardian entitled to custody was considered in *Ms. Githa Hariharan and another Vs. Reserve Bank of India and another AIR 1999 SCC 228* and the judgment is a telling reminder to shed the patriarchal mindset to prefer a male even to issue of guardianship.

3. The Court has only passed an interim order and the petitioner can surely bring appropriate evidence to prove what he is

contending for that the mother has become incompetent to take care of the child and allowing for retention of the custody to mother will cause emotional disturbance to the child and work against the welfare of the child. As of now, the interim custody given to the mother is most just and rights of parties having not concluded yet.

4. There is simply no prejudice that could said to have been caused for intervention in revision petition. The revision petition is dismissed.

(K. KANNAN)
JUDGE

December 09, 2015
Pankaj*