

**Sr.No.313
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.5307 of 2002
Date of decision: 08.10.2015**

Avtar Singh

...Appellant

Versus

Mandeep Kaur @Rani

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Ms. Anuradha Oberoi, Advocate for
Ms. Upasna Dhawan, Advocate,
for the appellant.

None for the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellant challenges, order dated 05.10.2002, passed by the Guardian Judge, Ropar, granting custody of Gurpreet Kaur and Gurdeep Singh, minor children of the parties to the respondent.

The appeal came up for consideration on 31.10.2002. Notice was issued for 11.02.2003 and operation of the impugned order was stayed. Parties were also directed to be present in person.

The respondent was served but did not put in appearance. The appeal was consequently admitted on 11.02.2003. A fresh notice was issued to the respondent on 20.09.2013. Though it was received back served, the respondent did not put in appearance.

Counsel for the appellant submits that as per information supplied by the appellant, after the marriage of the parties was

dissolved by grant of a decree of divorce, the respondent has remarried and is now blessed with two children from this marriage. Counsel for the appellant also states that the daughter is now 19 years and boy is 16 plus and have spent most of their lives with the appellant, the appeal may be allowed.

We have heard counsel for the appellant, perused the impugned order as well as the record. The respondent filed a petition for guardianship of the minors who were at that time aged about six years. The Guardian Judge, passed an order granting custody of the minors to the respondent primarily on the ground that the minors are too young and therefore, their welfare lies with their mother. The appeal has been pending for the last 12 years but the respondent has despite service failed to put in appearance, whether personally or through a counsel. The children are now 19 and 16 years old, respectively and have been living with the appellant. The statement made by counsel for the appellant that the respondent has remarried and is, therefore, not interested in pursuing the matter, appears to be correct. Consequently, taking into consideration the aforesaid facts, we allow the appeal, set aside the impugned order and dismiss the application filed by the respondent for custody of the children but with liberty to the respondent to seek revival/modification of this order, if the statement made by counsel for the appellant is incorrect.

(RAJIVE BHALLA)
JUDGE

08.10.2015

vandana

(REKHA MITTAL)
JUDGE