

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5477 of 2012 (O&M)

Date of Decision: 19.2.2015

Nagendra Singh

....Appellant.

Versus

Shivalika Dahiya

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE SNEH PRASHAR.**

PRESENT: Ms. Isha Goyal, Advocate for the appellant.

Mr. Kunal Dawar, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay of 171 days in filing the appeal is condoned.
2. Having lost before the trial court in a petition filed under Section 25 of the Guardian and Wards Act, 1890 (in short “the Act”) read with Sections 6 and 13 of the Hindu Minority and Guardianship Act, 1956 for the custody of minor daughter, namely, Rishita, the appellant-husband has approached this Court by way of instant appeal challenging the judgment dated 6.2.2012 passed by the District Judge, Family Court, Gurgaon.
3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 22.4.2004 at Air Force Auditorium, Subroto Park, New Delhi. Out of the said wedlock, a daughter, namely, Rishita was

born on 27.3.2005. At the time of birth of the child, nobody except the mother of the respondent visited the house of the appellant though her father stayed 200 meters away from his house. The mother of the respondent stayed at the appellant's house only for 10 minutes and left in a huff. With the passage of time, the child started to grow, the appellant and his parents became very affectionate and emotionally attached to the child upon which the respondent started behaving in a different manner with them. The appellant tried to make her understand not to indulge into any act which would disturb the paramount interest of the child and the family. The respondent did not mend her ways. Thereafter, the appellant told the same to her parents who started blaming him that he was not taking care of her. On 7.9.2008, the respondent along with the minor child, all of a sudden left Hyderabad where the appellant was posted and came to her parents house at Gurgaon without informing him. The appellant made repeated endeavour to meet his minor child but he was not allowed to do so by the respondent and her parents. Thereafter, the appellant filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights in the Family Court at Hyderabad. The respondent instead of returning back to her matrimonial home, lodged a criminal complaint under Sections 498-A/506 of the Indian Penal Code against the appellant, his parents and a married sister. In the said case on all dates, the appellant had brief interaction with the respondent and during that time, he asked about the welfare of the minor child to which the respondent would not give any satisfactory answer. Even a day before Diwali, the appellant visited the respondent to have a peep of his minor girl but he was abused and denied to meet the child. The respondent

had withdrawn the said complaint filed under Sections 498-A/506 of the Indian Penal Code on 27.2.2009. The appellant had made repeated attempts to resolve the issue in the interest of the family but to no avail. He was drawing handsome salary and was ready to pay the expenses of minor child and being father of the minor had a legal right to take her custody. Accordingly, the appellant filed a petition for custody of the minor child. The said petition was resisted by the respondent by filing a written statement. Besides raising various preliminary objections, it was pleaded that the respondent was tortured and abused for giving birth to a female child by the appellant and his family members. It was denied that the respondent along with the minor child left Hyderabad and infact, she and her minor daughter were thrown out from the matrimonial home by the appellant in the night hours and they somehow managed to take shelter in the house of Ms. Meena at Hyderabad. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled to the custody of minor? OPP
2. Whether the petitioner has locus standi to file the present petition? OPR
3. Relief.
4. In support of his case, the appellant himself appeared as PW1 and besides tendering his affidavit Ex.PW1/A reiterating the averments made in the petition and also placed on record documents Ex.P1 to Ex.P12. On the other hand, the respondent examined herself as RW1 and tendered her affidavit Ex.RW1/A reiterating the averments

made in the written statement. She also placed on record various documents.

5. The trial court on appreciation of evidence led by the parties, decided issue No.1 against the appellant holding that keeping in view the age of the minor girl child, her custody with the respondent was in her welfare. However, for the proper growth of the child, she requires love and affection from both father and mother. Therefore, the appellant was given visitation rights. Issue No.2 was decided against the respondent being not pressed. Accordingly, the trial court vide judgment dated 6.2.2012 partly allowed the petition. Hence, the present appeal.

6. Learned counsel for the appellant restricted her prayer in the appeal to the visitation rights only. She relied upon the judgment of the Apex Court in **Ruchi Majoo v. Sanjeev Majoo (2011) 6 SCC 479**.

7. On the other hand, learned counsel for the respondent supported the judgment passed by the trial court. Learned counsel for the respondent has not seriously opposed the prayer made by the learned counsel for the appellant. Reference was made to the judgment of the Supreme Court in **Gaytri Bajaj v. Jiten Bhalla, 2012(4) RCR (Civil) 603**.

8. We have heard learned counsel for the parties and perused the record.

9. The Apex Court in **Gaytri Bajaj's case (supra)** discussing the issue relating to custody of minor child had held as under:-

“14. From the above it follows that an order of custody of minor children either under the provisions of The Guardians and Wards Act, 1890 or Hindu Minority and Guardianship Act, 1956 is required to be

made by the Court treating the interest and welfare of the minor to be of paramount importance. It is not the better right of the either parent that would require adjudication while deciding their entitlement to custody. The desire of the child coupled with the availability of a conducive and appropriate environment for proper upbringing together with the ability and means of the concerned parent to take care of the child are some of the relevant factors that have to be taken into account by the Court while deciding the issue of custody of a minor. What must be emphasized is that while all other factors are undoubtedly relevant, it is the desire, interest and welfare of the minor which is the crucial and ultimate consideration that must guide the determination required to be made by the Court.”

10. In the present case, the child appeared to be happy in the company of her mother who also appears to be in a position to look after her, provide her with adequate educational facilities and also to maintain her in a proper and congenial manner. Even the child was produced before the trial court and she expressed her desire to live with her mother and was afraid of her father. She also stated that she did not want to talk to her father as he had hit on her face. The trial court had observed that keeping in view the age of the minor child, her custody with the respondent was in her welfare. Further, minor Rishita was produced in this Court as well and she expressed that she did not want to live with her father and repeatedly said that she wants to live with her

mother.

11. In such circumstances, we do not find any reason to differ with the approach of the trial court regarding custody of the minor child. In so far as visitation rights to the appellant are concerned, in the light of principles enunciated in the judgment of the Apex Court in **Ruchi Majoo's case (supra)**, keeping in view the facts and circumstances of the case and the paramount consideration of the child, we direct that the appellant would be entitled to have the visitation rights once a month on 2nd Sunday from 11.00 AM to 2.00 PM at the same venue as mentioned in the order dated 21.4.2014, i.e. MGF McDonald in the presence of the mother till she attains the age of majority.

12. The appeal stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

February 19, 2015
gbs

(SNEH PRASHAR)
JUDGE