

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-1908-2015(O&M)

Date of decision : 06.10.2015

Satish Sharma

... Appellant

Versus

Bimla Devi @ Meenu

... Respondent

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

Present: Mr.Sushil Bhardwaj, Advocate
for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against the judgment dated 07.01.2015 passed by the District Judge, Family Court, Ambala whereby the petition under the Hindu Minority and Guardianship Act for custody of minor Vanshikha (daughter of the parties) has been allowed in favour of the respondent-mother.

The brief factual matrix of the case is that marriage of the parties was performed on 22.11.2009 and the minor child was born on 27.08.2011. It has been averred that behaviour of the appellant was not good towards the respondent and he along with his family members started taunting the respondent for bringing inadequate dowry. She was given beatings for her inability to fulfill illegal demand of dowry. The appellant neglected to maintain the respondent and the minor daughter. She was turned out of the matrimonial home on 31.07.2012 and the minor daughter was snatched from her. The appellant is involved in criminal cases and the child is not safe in his hands. A criminal case under Sections 498-A, 406,

506 and 323 IPC was filed by the respondent and another criminal case pertaining to FIR No.45 under Sections 406, 420 read with Section 34 IPC is pending in the Court at Pehowa. The respondent being the natural mother is entitled to custody of the child as she can look after needs and necessities of the child properly.

The appellant filed the reply raising preliminary objection in regard to territorial jurisdiction of the Court as the minor was residing at village Murtzapur, Tehsil Pehowa, District Kurukshetra. He has denied the allegations that the respondent was maltreated on account of demand of dowry or otherwise. The respondent was given love and affection and she left the matrimonial home on the pretext of marriage of her relative and took away the entire jewellery and ornaments gifted by her in-laws. She is a quarrelsome lady who never respected the appellant and his parents and even refused to perform household work. The respondent withdrew from society of the appellant and the minor child. Minor Vanshika is being brought up under care and custody of her father and grand parents in a very nice manner. The appellant is financially sound to maintain the minor in the best possible manner.

The controversy between the parties led to framing of following issues:-

1. *Whether the petitioner is entitled to custody of minor Vanshika (daughter) on the grounds pleaded in the petition?OPP*
2. *Whether this Court has got no jurisdiction to entertain the present petition?OPR*

3. *Relief.*

The learned trial Court permitted the parties to lead evidence in support of their respective contentions. The respondent appeared in the witness box and examined Bhim Singh her father PW2. To rebut evidence of the respondent (petitioner therein), the appellant stepped into the witness box.

The learned trial Court on a thoughtful consideration of the pleadings of the parties, evidence adduced by them in support of their respective contentions and rival submissions recorded its conclusion that as welfare of the child lies with the mother, the respondent is entitled to custody of the minor child and accordingly, the appellant was directed to hand over the child to the respondent within a stipulated period. However, the appellant has been granted visitation rights to meet his daughter once in a month preferably on a Sunday after prior intimation to the respondent.

Feeling aggrieved against the judgment passed by the trial Court, the present appeal has been preferred by the appellant-father of the minor child.

Counsel for the appellant would submit that the learned trial Court has failed to take into consideration that there is no averment in the petition nor any evidence has been adduced by the respondent to substantiate her claim that she is really and seriously bothered about the care and well being of the child. The respondent left the matrimonial home leaving the child of a tender age (less than one year) at the mercy of her father. She never made any attempt to meet the minor or seek her custody for a long period. It is further argued that as the child is being looked after

by the father alone for the past more than three years and has developed love and affection with him, it would be difficult for her to adjust with the mother, guilty of depriving the minor of motherly care, love and affection.

Another submission made by counsel is that the respondent-mother has got no source of income and the appellant has sufficient means to satisfy needs of the child. The minor is emotionally attached with her grand mother who is taking care of her for the past more than three years. The child would suffer a trauma and set back in case she is uprooted from the family of her father.

Counsel for the respondent, on the other hand, while refuting contentions of the appellant would submit that the learned trial Court analyzed the most important aspect of welfare of the child in great detail in the light of facts and circumstances of the case, statutory provisions relevant in the context and judgments cited and rightly came to conclude that it would be in the interest of the minor if the custody is handed over to the mother. It is further argued that father of the respondent is working as a mason and he has the means to provide for needs of the child. Even otherwise, if the appellant's assertion that he is interested in the welfare of the child is bonafide, he can pay a reasonable amount for maintenance of the minor so that the child does not suffer in any manner whatsoever for want of adequate funds. The last submission made by counsel is that the respondent being mother is the best person to look after physical, emotional and other requirements of the female child.

We have heard counsel for the parties, perused the records and find no merit in the appeal.

There is no dispute that the principles of law in relation to custody of a minor child are well settled. It is trite that while determining as to which parent, the care and control of a child should be given, the first and paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. The question of the welfare of the minor child has to be examined in the context of relevant facts and circumstances. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member but better financial resources of either of the parents can never be the sole determinant factor for custody of a child. It has been consistently held by the Courts that a duty is cast on the Courts to exercise their judicial discretion in the background of the relevant facts and circumstances bearing in mind the welfare of the child as the paramount consideration.

Now reverting to the case in hand, the minor child was born on 27.08.2011 and the mother left the matrimonial home in July 2012. As per plea of the respondent, she was turned out of the matrimonial home by the appellant and the minor child was snatched from her. She filed the petition in May 2013, within one year of separate living of the parties. There is no material on record to substantiate plea of the appellant that the respondent left the minor child at the mercy of her father voluntarily much less by giving consent. Had it been so, there was no reason for the respondent to initiate the proceedings for custody of the child within a short span.

To assert preferential claim for custody, much stress has been laid upon the fact that the appellant father is an earning hand and the

respondent does not have any source of income. The financial status of the parties is one of the relevant considerations for deciding custody of a child. The appellant-husband is working as Pandit at Pehowa Ghat and earning about ₹8000/- per month. The learned trial Court has noticed that the appellant has an obligation to look after his two unmarried sisters and younger brother with special needs. The father of the respondent is a mason by profession and earns ₹15,000/- per month. The appellant being father of the minor has an obligation to provide for maintenance of the child, irrespective of the fact as to in whose custody and care, the child is brought up. In this view of the matter, the mere fact that the appellant is working on daily wages or as Pandit at Pehowa and thus earning approximately ₹8000/- per month is not at all sufficient to hold that it would be expedient in the interest of the child if her custody remains with the father. We would hasten to add that it has been proved on record that the appellant is facing criminal proceedings initiated at the behest of the respondent as well as by some other complainant. It is a matter of common knowledge though otherwise admitted by the appellant that he has to attend court proceedings which consume the whole day and trial proceedings are pending at Ambala, Pehowa and Kurukshetra. The pendency of criminal cases against the appellant reflects upon his antecedents and also the fact that he would be physically and mentally occupied in those proceedings. On the contrary, there is no impediment for the mother to claim custody of the child. This apart, the child would be needing her mother the most when she grows up and undergoes biological changes. Keeping in view totality of relevant facts and circumstances, we do not find any infirmity much less illegality in the impugned judgment.

For the reasons aforestated, finding no merit, the appeal is dismissed leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

(RAJIVE BHALLA)
JUDGE

October 06, 2015.
Davinder Kumar