

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2026 of 2015 (O&M)

DATE OF DECISION: MAY 26, 2015

HARSIMRANJIT SINGH TOOR
(SINCE DECEASED) THROUGH L.R.s

...APPELLANT

VERSUS

GAGANPREET KAUR TOOR

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. PARMINDER SINGH-I, ADVOCATE
FOR THE APPELLANT.

MR. DIVJYOT SINGH SANDHU, ADVOCATE
FOR THE RESPONDENT.

M. JEYAPPAUL, J.

1. The parents of Harsimranjit Singh Toor (since deceased) who was the husband of respondent Gaganpreet Kaur Toor have challenged the appointment of respondent as guardian for the minor child and the custody of the minor child granted to the respondent herein in the suit filed by the respondent for the guardianship and custody claimed under Section 6 of the Hindu Minority and Guardianship Act, 1956.

2. Serious allegation had been levelled by the respondent as against her husband who was alive at the time when the petition claiming the above reliefs was filed as against him. As his parents have figured as defendants in the suit resisting the above claim of the respondent after his demise, we are of the view that the allegations made by the respondent

against her husband do not warrant detailed elaboration.

3. In brief, the respondent herein in her suit under Section 6 of the Hindu Minority and Guardianship Act, 1956 has stated that she married Harsimranjit Singh Toor on 22.6.2007. Thereafter, the couple proceeded to Melbourne, Australia on 20.6.2008. They were blessed with a daughter, namely, Shubhani Toor on 15.12.2008. The respondent alleged that her husband was a drug addict. He failed to complete full tenure of drug and alcohol programme in Australia. He used to spent money on alcohol and drugs putting the respondent herein in a precarious position. Therefore, the child was sent to the parents of the husband for a little while to reduce the pressure on the respondent herein.

4. It was further alleged by the respondent herein that on 10.11.2011, she obtained an Intervention Order from the Magistrate Court at Victoria at Broadmeadows against her husband. She is expecting to get permanent residency in the near future. She is capable and competent to be the natural guardian of the child. The plaintiff is suitably employed in Melbourne, Australia. She received an annual wage of approximately AUD\$50,000/- which is sufficient to provide comfortable social and economic atmosphere. She is also a degree holder in Bachelor of Biotechnology in India. She has also got Diploma in Community Welfare in Australia. Therefore, she has submitted that she is entitled to be declared as a guardian and that she is also entitled to have the custody of the child.

5. The husband of the respondent herein resisted her claim alleging that the respondent herein developed illicit relations with one

Hobby Bajwa in the year 2009 who studied with the respondent in the college. His wife used to come at odd times. Sometimes she returned home in drunken condition. Harsimranjit Singh Toor came to know from the office of the respondent herein that the respondent was residing with Hobby Bajwa. Fraudulently, an ex-parte decree of divorce was obtained by the respondent on 23.2.2013. He denied that he was an alcoholic and drug addict. The respondent used to spend most of her time out of her house. She is residing in adultery with Hobby Bajwa. The child is studying in Bachpan School, Bathinda which has a good reputation in India. Under such circumstances, if the custody of the child is given to the respondent herein, the future of the child will be destroyed, it is contended.

6. The trial Court having thoroughly adverted to the evidence on record came to the conclusion that the respondent herein was entitled to be appointed as a guardian of minor Shubhani Toor and was also entitled to the custody of the minor child.

7. The fact remains that minor Shubhani Toor was born on 15.12.2008 out of the wedlock of the respondent with Harsimranjit Singh Toor that took place on 22.6.2007. The respondent has filed the suit under Section 6 of the Hindu Minority and Guardianship Act, 1956 before the child attained 5 years of age. As per Section 6(a) of the said Act, the custody of the minor who has not completed the age of 5 years shall ordinarily be with the mother.

8. It is an admitted fact that the husband and wife had thought it fit to send the child to India for upbringing by the parents of Harsimranjit

Singh Toor. There is also no dispute to the fact that respondent Gaganpreet Kaur has obtained a decree of divorce from her husband on 23.3.2013 from Federal Magistrate Court of Australia. Unfortunately, Harsimranjit Singh Toor has passed away.

9. It is a well settled position of law that financial position of the rival parties cannot be a determining factor to decide the claim of custody of the minor child. The welfare of the minor child shall be the paramount consideration. The Court will have to decide whether the respondent or the appellant herein would be the fit person to have custody of the child.

10. The 1st appellant Saroop Singh Toor has retired from service. The 2nd appellant who is the wife of 1st appellant is also an aged woman. The evidence on record would go to establish that they have a daughter who is yet to be married. Of course, their financial position is very sound as per the records produced by them, but that cannot be a factor which would ultimately decide the rival claim of custody of the minor child. Respondent Gaganpreet Kaur also has established that she has got permanent job in Melbourne, Australia drawing annual salary of AUD\$50,000/- which would definitely be sufficient for the comfortable life of mother and the child.

11. It is true that the child was left in the custody of the appellants herein as per the joint decision taken by respondent Gaganpreet Kaur and her late husband Harsimranjit Singh Toor. The circumstances, which prevailed then, warranted the couple to take such a hard decision to send the child to Bathinda for her upbringing. There had been a financial stress on the couple who was living in Australia. It is only now that the respondent

Gaganpreet Kaur Toor has secured a permanent job in Melbourne, Australia.

The emotional attachment of the mother with her 6½ years old baby girl would definitely keep the child in good mental and spiritual health. There is nothing on record to show that Gaganpreet Kaur who is the mother of the child would act adversely to the interest of the minor child. Every child would long to have the love and affection of her mother. The fulfillment of such a longing would definitely shape the all round personality of the child.

12. Learned counsel appearing for the appellants would submit that the child is studying in a very reputed school in Bathinda. The appellants have an enormous wherewithal to take care of the needs of the child, it is further submitted.

13. The financial soundness of one of the parties who claim custody may have a say when the poor financial position of the opponent in the litigation would deprive the bright educational prospect of the child. In the instant case, the respondent has established that she being a permanent employee in Melbourne, Australia is drawing an annual salary of approximately AUD\$50,000/-. In other words, the respondent has sufficient income to meet the educational expenses of the child apart from providing other comforts to her. Therefore, the sound financial position projected by the appellants cannot be considered as a determining factor which has the capability to over-shadow the claim of the respondent.

14. There was a wild allegation made as against the respondent that she also developed drinking habits. But unfortunately, there is no proof to establish such an unfounded allegation. Another wild allegation has been

made by producing Ex.R1 that the respondent started living in adultery with one Hobby Bajwa. In our considered view, the trial Court has thoroughly gone into the document Ex.R1 and rightly come to a conclusion that said document *per se* does not establish that the respondent has been living in adultery with Hobby Bajwa. Apart from the above wild allegation which was not established, we find that there is no other weighty ground to upset the claim of guardianship and custody made by the respondent.

15. The respondent is just 28 years old. She is undoubtedly hale and hearty. She might have come her house in Melbourne late during night as she was vexed with the attitude of her husband who had been punished for drunken driving as per the documents produced by the respondent. But when the daughter starts staying with the mother, the mother will rush to the house the moment her official duty is over, as she has the onerous responsibility of grooming her daughter. The mutual longing of the mother and daughter would be satisfied only if the child is with the mother, more specially in the absence of the father.

16. In view of the above facts and circumstances, we find that the trial Court has rightly taken a decision to appoint the respondent as guardian for minor Shubhani Toor and to give custody of the minor child to the respondent. Therefore, the judgement passed by the trial Court is confirmed and the appeal is dismissed with a direction to the appellants to hand over minor child Shubhani Toor to respondent Gaganpreet Kaur Toor within one month from the date of pronouncement of this judgement.

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17. In view of the fact the main appeal has been disposed of today, the application becomes infructuous and therefore, it stands dismissed as such.

(M. JEYAPPAUL)
JUDGE

May 26, 2015
Gulati

(RAJ RAHUL GARG)
JUDGE