

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No.5478 of 2014 (O&M)
Date of decision: 4.02.2015**

Harpreet Kaur

.....Appellant

Vs.

Harcharanjit Singh

.....Respondent

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

Present: Mr. Tribhawan Singla, Advocate for the appellant-wife.

Ajay Kumar Mittal,J.

CM No.15258 CII of 2014

1. There is a delay of 12 days in filing the appeal. For the reasons mentioned in the application and after hearing learned counsel for the appellant-wife, the delay in filing the appeal is condoned. CM stands disposed of.

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2. This appeal has been preferred by the appellant – wife against the judgment dated 22.11.2013 passed by the trial court, whereby the petition filed by the appellant-wife under section 25 of the Guardians and Wards Act, 1890 (in short, “the Act”) for custody of her minor son namely

Divjot Singh has been dismissed.

3. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnised on 17.10.2004 according to Hindu rites and rituals by way of Anand Karaj. Out of the wedlock, one son namely Divjot Singh and one daughter namely Ikjot Kaur were born on 12.2.2006 and 11.6.2009 respectively. As alleged in the petition under Section 25 of the Act filed by the appellant-wife, from the very beginning, the respondent and his family members maltreated and misbehaved with the appellant. As and when the demand was not fulfilled, the respondent used to give severe beatings to her. Ultimately, the respondent threw the appellant out of the house and kept the children with him. Upon notice, the respondent appeared through counsel and filed written reply stating inter alia that the appellant had no cause of action or locus standi to file the application as she of her own withdrew from conjugal society of the respondent without any sufficient cause on 7.7.2010 leaving both the children in the matrimonial home. Both the children are now studying. Rejoinder was not filed by the appellant to the written reply filed by the respondent. The trial court after examining the matter dismissed the petition vide judgment dated 22.11.2013 impugned herein. Hence the instant appeal by the appellant wife.

4. We have heard learned counsel for the appellant.

5. From the pleadings of the parties, the trial court framed the following issues:-

“(i) Whether the applicant is entitled for custody of minor child, if so, its effect? OPA

(ii) Relief.”

It has been categorically recorded by the trial court that the appellant failed to lead any evidence in spite of sufficient and effective opportunities including last and final opportunity granted to her. The relevant finding recorded by the trial court reads thus:-

“8. The onus to prove this issue placed upon the applicant. However, no evidence has been led by the applicant to prove this issue, though she availed sufficient and effective opportunities including the last opportunity. Since there is not even an iota of evidence led on behalf of the applicant, therefore, mere pleadings sans evidence do not go to prove the entitlement of the applicant in respect of the relief claimed in this application. As such, this issue is decided against the applicant and in favour of the respondent.”

6. In spite of various opportunities given by the trial court, the appellant did not produce any material or evidence in support of her plea for taking the custody of the minor children who are now living with the respondent-husband. Even the appellant had not appeared in the witness box. No satisfactory explanation has been furnished by learned counsel for the appellant to show as to what prevented the appellant to depose in terms of her petition before the trial court. In such circumstances, learned counsel for the appellant has not been able to show any illegality or perversity in the impugned judgment. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 04, 2015
gs'

(Sneh Prashar)
Judge