IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.5595 of 2015 (O&M)
Date of Decision: 31.8.2015

Surinder Kumar **.....Appellant**

Vs.

Sarup Singh and others **.....Respondents**

CORAM:- HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE NAVITA SINGH

Present:- Mr. Ashwani Talwar, Advocate for the appellant.

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RAJIVE BHALLA, J.

The appellant challenges order dated 18.8.2015 passed by the District Judge, Family Court, Ambala.

Counsel for the appellant submits that an application for conduct of a DNA test was dismissed but vide the impugned order, the learned Family Court has directed the appellant and the child to undergo a DNA test, primarily, on an alleged admission made by the appellant during his cross-examination that he is ready to undergo a DNA test. A perusal of the impugned order reveals that the trial Court has itself recorded that Surinder Kumar does not want to go in for a DNA test but has thereafter relied upon a part of the appellant's cross-examination to hold that as he is ready for a DNA test. The order is, therefore, contradictory and even otherwise, no one can be forced against his wish to undergo a DNA test.

We have heard counsel for the appellant and perused the impugned order. It is true that while considering an application for conduct of a DNA test, the Family Court, Ambala dismissed the application

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on 12.2.2014 but as during cross-examination, the appellant made a statement, agreeing to a DNA test has directed the appellant to undergo a DNA test. The statement made by the appellant reads as follows:-

> "If the court direct me to compare my DNA with the DNA of ward Chander Shekhar I am ready to carry out the procedure"

The appellant having agreed to undergo a DNA test, the impugned order does not call for interfere. We are also not inclined to accept the appellant's submission that the DNA test would prejudice the case of the appellant or the rights of minor as the Family Court has considered the statement as well as the necessity of a DNA test. At this stage, it would be appropriate to record that the appellant claims paternity of the minor by alleging a "kareva" marriage with the mother (since deceased) of the minor. Consequently, we find no merit in the appeal and dismiss the same accordingly. The question whether the appellant can be forced to submit to a DNA test is left open to be decided by the trial Court, if the need so arises.

(RAJIVE BHALLA)
JUDGE

August 31, 2015 **(NAVITA SINGH)**
renu **JUDGE**

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