

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 4807 of 2015

Date of Decision:- 19.01.2016

Gurmeet Singh

...Petitioner

Versus

Sukhjeet Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. P.S.Jammu, Advocate,
for petitioner.

Mr. Rakesh Nagpal, Advocate,
for respondent.

SHEKHER DHAWAN, J.

Present petition under Article 227 of the Constitution of India for setting aside the order dated 21.07.2015 (Annexure P-5) passed by Additional Civil Judge (Sr. Division), Ratia, whereby the application under Order 39 Rules 1 and 2 read with Section 151 CPC was allowed and custody of minor child was handed over to the respondent-wife.

2. Relevant facts for the decision of present petition, that marriage between the parties to the litigation was solemnized on 08.02.2009 according to Hindu rites and ceremonies. Out of this wedlock, a female child, namely Navneet Kaur was born on 19.02.2010, who is now about 6 years of age. There was matrimonial dispute between the parties and finally

mutual settlement took place and the marriage between the parties was dissolved vide a decree of divorce. At that time, it was decided that custody of minor girl Navneet Kaur will remain with the petitioner-husband. For the last more than 2 years Navneet Kaur is residing with the present petitioner, who is father of Navneet Kaur. Earlier a petition under Section 7 of Hindu Minority and Guardianship Act (hereinafter referred to as 'the Act') for custody of minor girl Navneet Kaur was filed but, the same was later on dismissed as withdrawn on 01.03.2014. Thereafter another petition under Section 7 of 'the Act' was filed.

3. Learned counsel for the petitioner submits that earlier petition was filed before the trial Court and the same was dismissed vide order dated 16.12.2014 and revision petition was filed before this Court, wherein direction was given to decide the application again and the order dated 16.12.2014 was set aside. Earlier custody of minor girl was given to father. Thereafter the divorce petition was filed. As per learned counsel for the petitioner, respondent-mother is not having sufficient income, but she is getting pension of ₹1200/- per month only as per information received by him through Right to Information Act whereas petitioner, who is father of the minor child is a farmer and is having a sufficient income. The minor child is a school going child and at present, she is studying in a Convent school. Welfare of the child also required that custody of minor child should remain with father only.

4. Learned counsel for respondent submits that custody of minor child should be given to the respondent-mother only. More so, now respondent is in a position to maintain the minor child as she had been paid ₹12,00,000/- and she is earning income from interest and pension and she

can maintain the girl child.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that a final settlement had already taken place between the parties whereby custody of minor girl namely Navneet Kaur was handed over to the present petitioner after receiving a sum of ₹12,00,000/-. At that time mother herself had surrendered the custody of minor child. Minor child is in the custody of present petitioner from the last about 2 years on the basis of mutual settlement between husband and wife and she is studying in a school and all expenses are being met by the father. It is not disputed that petitioner is having sufficient means to maintain the minor child. Respondent-wife is getting pension of ₹1200/-. There is nothing on the file, on the basis of which it may be said that the mutual settlement arrived at between the parties regarding custody of the minor child Navneet Kaur should be disturbed and that is not for the welfare of the minor child Navneet Kaur. However, the Court below has completely ignored this fact while passing the order for custody of the minor child Navneet Kaur.

6. In view of the above, present petition is accepted and the order dated 21.07.2015 passed by Additional Civil Judge (Sr. Division), Ratia is set aside and petitioner Gurmeet Singh (father) shall be entitled to the custody of his minor daughter Navneet Kaur.

January 19, 2016

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(SHEKHER DHAWAN)
JUDGE