

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

Civil Revision No.2822 of 2016

Date of Decision: 20.04.2017

Daljit Singh

....Petitioner

Versus

Sarabjit Kaur

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Mandeep Kumar Dhot, Advocate
for the petitioner.

Mr. Harshit Jain, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 16.03.2016 passed by the Sub Divisional Judicial Magistrate, Malerkotla, whereby, the petitioner has been directed to produce the minor child, namely, Prabhjit Singh, who is about 16 years of age, in the Court at Malerkotla on the last Friday of every month.

Briefly, the facts of the case are that the petitioner was married with respondent on 02.12.1997 and out of the said wedlock, a male child was born on 30.09.1999. However, due to temperamental differences, the marriage could not succeed and both the parties decided to depart from each other by way of filing joint petition under Section 13-B of the Hindu Marriage Act. The said petition was allowed and it was mutually decided by

both the parties that minor son, namely, Prabhjit Singh shall remain in the custody of the petitioner-husband, whereas, no visiting right was granted to the respondent-wife. Thereafter, petitioner performed his second marriage and in the meantime, respondent-wife also got married with one Avtar Singh and out of said wedlock, two children were born. Thereafter, respondent-wife filed a petition under Section 25 of the Guardians and Wards Act for the custody of minor Prabhjit Singh after a gap of eight years of divorce. In the said petition, the interim relief was prayed by the respondent-wife for interim custody of minor son. While deciding the issue of custody of minor son, it was ordered that respondent-wife was having right to meet her minor child and the petitioner-husband was directed to produce the minor child Prabhjit Singh in the Court on last Friday of every month till the disposal of petition. Respondent-wife was also allowed to meet the minor child in the court room of Presiding Officer on the day of passing of impugned order.

Petitioner-husband has challenged order dated 16.03.2016, whereby, he has been directed to produce the minor child in the Court at Malerkotla on last Friday of every month.

Learned counsel for the petitioner submits that the welfare of the child is the paramount consideration and the distance between Amritsar and Malerkotla is about 180 kms., which will affect the study of the minor. Learned counsel further submits that the child is not interested in meeting the respondent-wife as he is getting full love and affection from his father. Learned counsel also submits that the impugned order has been passed without taking into consideration the wishes and welfare of the minor child and the same is liable to be set aside.

Learned counsel for the respondent submits that the visitation rights have been granted to the mother to meet the minor son in the Court of Presiding Officer at Malerkotla as it was mutually agreed between them. Moreover, love and affection of mother is also necessary for good upbringing and development of the personality of child.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

Admittedly, both the parties filed divorce petition under Section 13-B of the Hindu Marriage Act and the same was allowed. It was mutually decided that the minor child would remain with the petitioner-husband. The issue regarding custody of child is pending and only the interim direction has been issued that the petitioner-husband will allow the minor to meet the respondent-wife on last Friday of every month till the disposal of the petition. Respondent-wife was also allowed to meet the minor child in the court room of the Presiding Officer at Malerkotla.

While deciding the issue of custody of minor, the Court is to see the welfare by considering it as first and paramount consideration and not the legal right of any particular party. While making such order for appointing a guardian for the person of minor, the test requires to see as to what order and under what circumstances for securing the welfare and happiness of the minor can be. It is to be seen as to with whom the minor will be happy. It is also to be seen as to who is most likely to contribute to the well-being of the minor and also as to who is likely to bring up and educate the minor in the manner required to develop the entire personality, worthy of living, keeping the interest, well-being and happiness of the minor. The proper custody depends upon the circumstances, and in

particular, upon the minor's position and prospects in life.

Hon'ble the Apex Court in ***Dhanwanti Joshi vs Mahadev***

Unde 1999(1) Femi-Juris CC 336(SC) has held as under :-

*“ ...The welfare of the child is not to be measured by money alone nor by physical conform only. The word 'welfare' must be taken in its widest sense. The moral and religious welfare must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.” ... As to the “secondary” nature of material considerations, Hardy Boys, J., of the New Zealand Court said in **Walker v. Walker and Harrison**, (See 1981 N.Z. Recent Law 257) (cited by British Law Commission, working paper No.96, para 6.10)... “Welfare is an all-encompassing word. It includes material welfare, both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationship, that are essential for the full development of the child's own character, personality and talents.”*

“Custody” and “occasional visit” are two different concepts.

Custody implies an unfettered, an unembarrassed control and care of the infant, whereas, visiting is only just to see and enquire. It does not admit stay in a place other than the guardian to whose custody the child has been entrusted. Continuous stay exceeding momentary visit offends the order and it may even create a hostile impression on the father and even anything undesirable may happen. The mind of the minor should not be exposed or

subordinated to the instructions of a person other than those in whose custody had been entrusted.

The petition for custody is still pending. Only the interim custody has been decided by giving it to the petitioner-husband and visitation rights have been given to respondent-wife. Petitioner-husband is aggrieved by said interim order only on the ground that the place is very far and it may cause adverse affect upon the study of minor. The place of meeting was also mutually decided at the time of passing of interim order but subsequently, the present petition has been filed, whereas, the issue of custody is to be decided finally by the Court at Malerkotla. No other ground has been mentioned in the petition or in the arguments that the child has suffered any injury or he is not interested in visiting the respondent-mother.

Normally, the Revisional Court is reluctant to interfere with the discretion of the Custody Court as all facts and circumstances have been considered and it was mutually agreed between the parties. By substituting the discretion, any change for a short period may cause harassment to the minor and as such, no interference is required by this Court. However, before parting with this case, I feel it appropriate and proper that learned counsel for the parties may advise their clients to reconcile their differences to create a congenial matrimonial home, keeping in view the interest and welfare of the minor. In case, some mutual understanding is there between the parties and same can be by way of moving of an application before the same Court with certain other suitable terms and conditions for giving visitation rights to the parents.

For the reasons recorded above, I do not find any reason to interfere with the interim custody or visitation rights given to respondent-

wife. In case, such discretion is exercised, it would deprive the mother of the child of her visiting right and same may not be in the interest of minor as well as respondent-mother of the child.

Accordingly, the revision petition, being devoid of any merit, is hereby dismissed.

20.04.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes