

Civil Revision No.2469 of 2017 (O&M)

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

Sr. No.115

**Civil Revision No.2469 of 2017 (O&M)
DECIDED ON: April 07, 2017**

KAMAL MAINI

..PETITIONER

VERSUS

NATASHA @ MONA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sandeep Bansal, Advocate,
for the petitioner.

JASPAL SINGH, J.

CM No.7707-CII of 2017

Application is allowed as prayed for.

CR No.2469 of 2017

By virtue of the instant civil petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of impugned order dated January 04, 2017 (Annexure P-6) passed by the learned Civil Judge (Sr. Divn.), Hoshiarpur whereby an application filed by the petitioner claiming right to meet the minor child Vivan Maini and for

seeking custody of the minor child for some period during vacations has been dismissed.

2. Undisputably, during the pendency of the petition, three different applications moved by the petitioner-Kamal Maini one for getting the interim custody of minor child; second for directing the respondent to produce the minor child in the court and to permit him to meet the child and third to direct the respondent to produce the child in the court by amending the order dated December 22, 2014. All these three applications were disposed of by the Guardian Judge, Ludhiana vide order dated March 09, 2015. The operative part of which reads as under:-

“Earlier an interim order was passed that petitioner will meet his minor son by visiting the school of the minor twice in a month at Hoshiarpur. However the petitioner is not satisfied with the said arrangement on one ground or other. But then minor son cannot be directed to repeatedly come to Ludhiana to meet his father. So considering the totality of circumstances it is directed that petitioner will be entitled to meet his minor son on 15th of every month in the room of principal of Toddlers Home Study Halls School Hoshiarpur or any other room in the school under supervision of the school teacher or school authorities for a period of two hours form 10.00 AM to 12.00 noon. Except eatables any other gift, if any, can be handed over to the school teacher. Who in turn will hand over the same to respondent no.1. gift of eatables not permissible. Secondly on 30th of every month the respondents will bring the minor child to Ludhiana in order to enable the minor to meet his father in the chamber of their counsel for a period of two hours from 2.00 PM to 4.00 PM and the Taxi and other Kamal Maini Vs. Natasha 10 traveling expenses for the said purpose will be borne by the petitioner and the ld. Counsel for the respondent will

facilitate the said meeting in his chamber under his supervision and for his said service he will be paid a sum of Rs.600/- by the petitioner. Accordingly the present application stands allowed. In case the 15th and 30th is holiday then the said meeting will take place on next working day.

3. Aggrieved against the aforesaid order dated March 09, 2015, petitioner preferred a revision petition before this court. However, that revision petition was dismissed upholding the order dated March 09, 2015. In pursuance of the aforesaid order, the petitioner met the minor child at Ludhiana for the last time on June 03, 2015 and it is alleged that thereafter, the respondent did not bring the child to Ludhiana in compliance of order dated March 09, 2015. It was also alleged that not only this the petitioner was not even allowed to meet the minor child in the said school on August 18, 2015 as there was holidays from 15.08.2015 to 17.08.2015. However, on 15.09.2015 and 15.11.2015, the petitioner was allowed to meet the child. Subsequent thereto, he was not allowed to meet the child in the school also which constrained the petitioner to file a contempt petition against the respondent as well as school authorities.

4. The contention of the learned counsel for the petitioner is that petitioner being the father of the minor has got every right to meet the minor and seek his custody for some period during vacations. The minor cannot be divested of the love and affection of his father. Since, the petitioner was not being allowed to meet the minor child after passing of the order dated March 09, 2015, the petitioner moved another application dated May 20, 2016 seeking custody of minor child during summer vacation which was

declined as by the time the decision could not be taken by the court the summer vacation was over. Thereafter, another application dated October 04, 2016 was moved for the custody of the minor child for three days from October 29, 2016 to October 31, 2016 and with the consent of the parties, the order was passed by the court to see the child in hotel Maharaja at Hoshiarpur for three hours. An application dated November 08, 2016 was filed by the petitioner for grant of interim custody of the minor child in winter vacations of the school from December 25, 2016 to January 08, 2017. But that application was dismissed without any cogent ground by the trial court vide order dated January 04, 2017, which is absolutely against the settled principles of law especially in the circumstances that the petitioner being the father of the minor child cannot be divested to meet his child. As such, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

5. After bestowing during consideration to the aforesaid submissions made by learned counsel for the petitioner and scrutinizing the impugned order dated January 04, 2017 as well as other documents available on file, this court does not find any legal force in the various submissions made by learned counsel for the petitioner.

6. Undoubtedly, earlier the matter came before this court by way of Civil Revision No.4410 of 2015 against the order dated March 09, 2015 passed by Guardian Judge, Ludhiana, whereby an application seeking interim custody of the minor child from the mother filed by the petitioner was dismissed. That roving a revision petition was disposed of by this court vide order dated May 10, 2016 in which the following observation was

made:-

“However, the respondent-wife is directed to maintain the visitation rights as noticed and directed and none of the party should make any endeavour of attempt to violate or cause any disobedience because it is in the interest of child, so of having not kept at bay from the father for infinite period.

In case, any supervening fact or circumstance arise or atmosphere in the house of the respondent-wife is not convenient/congenial for the welfare of the child, liberty is granted to seek interim custody.

7. A glance at the aforesaid order transpires that all the facts and circumstances were considered by this court while passing the order dated May 10, 2016 and a necessary direction was given to the parties. But still the petitioner did not feel satisfied and kept on moving application for seeking interim custody of the minor child on one ground or the other which reflects upon his conduct. He should feel satisfied after the order dated May 10, 2016 passed by this court against which he did not like to challenge before the Hon’ble Apex Court. The moving of subsequent applications after passing of the order dated May 10, 2016 is nothing but to delay the disposal of the main petition as well as to cause harassment not only to the respondent-wife but to the minor child also. Finding no merit in the civil petition, the same is dismissed.

8. No order as to costs.

April 07, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No