

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

253

CR-3604-2017

Date of Decision:01.06.2017

Paramjit Kaur

.....Petitioner

Versus

Gurpal Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.H.S.Dhandi, Advocate,
for the petitioner.**

**Ms.Sukhpreet Kaur, Advocate,
for respondent Nos.1 and 2.**

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the impugned order dated 25.04.2017 (Annexure P-5) passed by the learned Family Court, whereby application of the petitioner for setting aside the ex parte order dated 26.04.2016 was dismissed, she has approached this Court by way of present revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that the child is of nine years and living with his mother-petitioner. Grand-parents have filed a petition under Sections 7 and 25 of the Guardian and Wards Act, 1890 read with Section 13 of the Hindu Minority and Guardianship Act, 1956 for

custody of the minor. The case was listed before the Family Court on

26.04.2016, on which date the petitioner could not put appearance and she was proceeded against ex parte, adjourning the case for 05.08.2016. It is also not in dispute that on the very next date of hearing i.e. 05.08.2016, petitioner put appearance and moved the application for setting aside the above-said order dated 26.04.2016. It was this application which has been dismissed by the learned Family Court by passing the impugned order.

A bare perusal of the impugned order would show that there was hardly any delay on the part of the petitioner. Admittedly, she put appearance on the very next date of hearing i.e. 05.08.2016. In such a situation, no malafide intention can be attributed to the petitioner. Learned Family Court proceeded on technical approach while passing the impugned order. Having said that, this Court feels no hesitation to conclude that the learned Family Court committed a serious error of law, while passing the impugned order and the same cannot be sustained.

It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Every court of law must make an endeavour to grant sufficient opportunity to both the parties to the litigation to put-up their best case before the Court. Nobody should be forced to go home with the grievance that reasonable opportunity was not granted by the learned court. While following the above-said principle of law, the learned Court shall achieve twin objects; namely, (i) it will avoid multiplicity of litigation between the parties and (ii) the learned Court would be in a much better position to do complete and substantial justice between the parties by rendering an effective judgment. However, in the peculiar fact situation of the case in hand noticed here-in-above, since the learned Family Court failed to follow the above-said principle of law in correct perspective, while

passing the impugned order, it cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that since the impugned order has been found suffering from patent illegality and perversity, the same cannot be sustained. Accordingly, impugned order dated 25.04.2017 (Annexure P-5) passed by the learned Family Court is hereby set aside. Application of the petitioner for setting aside the ex parte order dated 26.04.2016 would stand allowed and the petitioner shall be permitted to join the proceedings.

Resultantly, with the above-said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

June 01, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No