

Civil Revision No.3834 of 2017

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

Sr. No.133

**Civil Revision No.3834 of 2017
DECIDED ON: May 30, 2017**

SUBHRANTA NAIK

..PETITIONER

VERSUS

TOSHANI AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Saurabh Dalal, Advocate,
for the petitioner.

JASPAL SINGH, J.

Aggrieved against the order dated May 18, 2017 (Annexure P-4) passed by the learned District Judge, Family Court, Gurgaon, whereby interim custody of minor child namely Neeraj Nayan Naik has been granted to respondent No.1-wife during the summer vacation, the petitioner-husband has filed the instant revision.

2. Undisputably, the learned District Judge, Gurgaon while passing the impugned order dated May 18, 2017 has observed that the

jurisdiction of the court has become mixed question of fact and law which cannot be decided without taking evidence. However, he ordered that the respondent No.1/mother shall get the custody of minor child Neeraj Nayan Naik from the petitioner/father on May 20, 2017 and shall be entitled to retain till June 12, 2017 (20 days). The father shall get the interim custody of the minor child for the remaining period of summer vacation.

3. While challenging the impugned order learned counsel for the petitioner has urged that the same is illegal without jurisdiction and is not sustainable in the eyes of law and is liable to be set aside. In fact, the minor child namely Neeraj Nayan Naik is admittedly studying at Sundergarh at Orissa for the last six months along with his father and grandparents. Therefore, the learned Family Court at Gurgaon had no jurisdiction to try and entertain the application filed by the respondent No.1/wife. But without deciding the application with regard to the jurisdiction, the learned trial court has proceeded to pass the impugned order while granting the interim custody to the respondent No.1/wife. The taking of custody by the respondent No.1-wife is nothing but to disturb the child as well as to cause harassment to the petitioner and his other family members. Moreover, the welfare of child which is the paramount consideration in determining the question as to who should be given the custody of minor child stood violated in the instant case. The child is ordinarily residing and studying at Sundergarh at Odisha so bringing him to Gurgaon will disturb his peace.

4. This court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner and have scrutinized the impugned order.

5. No doubt, the principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given the custody of minor child, the paramount consideration is a welfare of child.

6. Admittedly, a petition under Section 6 of the Hindu Minority and Guardianship Act read with Section 25 of the Guardianship and Wards Act has been preferred by the respondent-wife on December 01, 2016 before the Family Court, Gurgaon. The petition under Section 13 of Hindu Marriage Act seeking divorce has also been preferred by the petitioner/husband. He has also moved an application under Section 26 of the Act seeking interim custody of minor child which is suggestive of the fact that he does not consider the custody of the minor child with him to be legal and intends to get it legalize as there are allegations that minor child was forcibly snatched away by the petitioner/father from his mother. The learned trial court has rightly held that jurisdiction of the court has become a mixed question of law and facts which cannot be decided without evidence to be adduced by the parties. At the same time, mother cannot be deprived of the company her minor child who is about six years of age. As far as permanent custody or guardianship of minor child is concerned, it is a matter of evidence and can only be decided on the basis of the evidence at the appropriate stage. Since the minor child would be on vacations during the summer season and is at present with his father i.e. petitioner, his interim custody for a period of 20 days has rightly been given to his mother/respondent No.1 by the learned trial court. The learned trial court has laid down certain terms and conditions in this regard so that there may

not be any bickering between the parties. Thus, this court does not find any infirmity or illegality in the impugned order dated May 18, 2017. Finding the same to be absolutely in consonance with the settled proposition of law and instant petition being devoid of merits, the same is dismissed.

5. No order as to costs.

May 30, 2017
Ankur

(JASPAL SINGH)
JUDGE

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