

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

CR No.4712 of 2017
Date of decision : 21.07.2017

Rahul Mehra

...Petitioner

Versus

Shweta

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Rajinder Goyal, Advocate for the petitioner.

ANIL KSHETARPAL, J.

The order passed by the Guardian Judge-cum-Civil Judge (Senior Division), Panchkula has been assailed by the husband in a present revision petition under Article 227 of the Constitution of India.

The learned Guardian Judge passed a consent order whereby application for interim custody and visitation rights filed by the petitioner was disposed of. It was agreed between the parties that the petitioner-husband would be able to meet minors for four hours on every second, third or fourth Saturday of each month in the company of wife and her parents. Thereafter, the Guardian Court reviewed the visitation place from Elante Mall to the premises of District Legal Services Authority, Panchkula.

The learned trial Court further restricted the meeting of the husband with minor children only to one.

Unfortunately, the wife met with a serious accident on

19.06.2017 and was admitted in PGI, Chandigarh. Husband-petitioner is alleged to have come to meet his estranged wife and on finding children present there, picked up both the children and whisk away without telling or taking permission from any of the family members.

In these circumstances, two applications were filed. One was moved on behalf of wife seeking restoration of the minors from the husband with police help whereas another application was moved by the husband allowing him to retain the custody of minor children till the wife recovers and take care of the children.

The learned Guardian Judge called both the children to the Court and after consulting the children, the learned Guardian Judge has recorded the following findings:-

“As such, for the purpose of disposing off the present applications, this Court called for the presence of minor children in the Court and also gave personal hearing to them. Both the minor children have stated before the undersigned that they were residing with their mother alongwith their maternal grandmother and maternal uncle and they also used to attend the school from there. They also told that when their mother met with an accident and they were in the hospital, their father came and took them away under the pretext that he would leave them after 10 minutes. They raised specific allegation that their father and paternal grandparents do not love them and they only falsely show this in the Court. They also told that their father do not send them to school and talk with them angrily. They further told that their mobiles were flushed out by their paternal grandmother and they were not even allowed to talk with their maternal grandmother. Further

that, their father is living with one lady namely Sonia in a separate house, who used to give them food, only if they ask for it. They further told that their paternal grandfather had tutored them to tell to the Court that they want to live with their father. They further told that their paternal grandparents and father do not love them and immediately after leaving the Court, they abuses them. They further told that they want to live with their mother, maternal grandmother and maternal uncle, as they all love them and they are happy there.”

Considering the wish of the minor children who are boys, the Guardian Judge allowed the application filed by the wife whereas application filed by the husband was ordered to be dismissed.

The present revision petition has been filed challenging the order dated 18.07.2007. Two submissions have been made by the learned counsel for the petitioner. One the original petition filed by the respondent-wife has been dismissed in default on 09.03.2016 and, therefore, the application filed by the wife for restoring the custody of children was not maintainable. He has further submitted that since wife is admitted in PGI, therefore, application could not be moved by the counsel as the application is not signed by the wife.

I have considered the arguments of the learned counsel for the petitioner. In my view, there is hardly any ground for interfering with the order passed by the Court.

There is no dispute that the petition filed by the husband seeking custody of the children and visitation rights is pending in the Court. Wife is respondent in the aforesaid petition and the Guardian Judge had

earlier passed an order with the consent of the parties. Thereafter, the visitation rights were reduced. In these circumstances, submission of the counsel for the petitioner that since petition filed by the wife has been dismissed in default, therefore, no application for restoration of the custody of children was maintainable. The proceedings before the learned Guardian Judge are not normal civil proceedings. These proceedings are to be decided with compassion and without being bound by procedural hyper-technicalities. Custody of minor children is a very very sensitive issue. The psychology of minor children gets adversely effected if custody of the children keeps in changing hands. The minor children, as recorded by learned Guardian Judge, in spite of the fact that the mother had met with a very serious accident, still expressed their desire to live with mother and their maternal grandmother and maternal grand uncle. Even their studies are being disturbed. Children have gone to the extent of expressing their dissatisfaction with the behaviour of the father and grandparents. Therefore, in my opinion, there is hardly any scope for interference in the present revision petition.

Learned counsel for the petitioner has submitted that since the application was not signed by the wife, therefore, such application was not competent. The wife had appointed a lawyer who was representing the wife in the case. Since wife was admitted in the hospital, therefore, it was not possible to get her signatures. Application was interim in nature. Advocate is certainly entitled to move an application on behalf of his client unless such assertions to be made in application are required to be supported by an affidavit. Counsels can certainly move interim applications by signing on

behalf of their client. Therefore, the second submission of learned counsel has also no force.

In these circumstances, finding no merit in the present revision petition, the same is ordered to be dismissed.

21.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No