

FAO-1025-2016 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO-1025-2016 (O&M).
Decided on: December 11, 2017.**

Sonia

.. Appellant

VERSUS

Sushil

.. Respondent

*** * ***

**CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI
HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH**

*** * ***

**PRESENT Ms.Nupur Chaudhary, Advocate,
for the appellant.**

**Mr.M.S.Khillan, Advocate,
for the respondent.**

M.M.S. BEDI, J. (ORAL)

After hearing the counsel for both the parties, it appears that both the parties to some extent are agreeable to the settlement that the appellant-mother cannot be deprived of her right of guardianship. For custody of minor son Brijesh, the appellant-wife had filed a petition under the Guardian and Wards Act. The District Judge, Family Court, Sonipat held that the appellant-wife is entitled to the custody of the minor son from the respondent but under issue No.2 the appellant-wife has been denied the benefit of finding on issue No.1 by holding that the Court at Sonipat does not have territorial jurisdiction. The lower Court disposed of the petition

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filed by the appellant-wife holding that the appellant-wife shall be entitled to present a fresh petition regarding the same cause of action before the Court of competent jurisdiction. The finding on issue No.2, prima facie, appears to be not sustainable as we have been told that the respondent-husband is working at Yamuna Nagar, but the child is staying at Karnal. By shifting the child from one place to another, the jurisdiction of the Court cannot be changed. It is settled principle of law that under Sections 18 and 19 (1) of the Guardian and Wards Act, while determining the rights of a party for guardianship of a minor child, the welfare of the child is the main concern and the place of jurisdiction would be the place where the minor “ordinarily resides.”

During the course of arguments, counsel for the parties have informed that petition under Section 13-B of the Hindu Marriage Act, has been filed, inter alia, on the term and condition that the marriage will be dissolved and the custody of the minor son Brijesh would remain with the respondent-husband. Since the appellant-mother herself has waived off her legal right regarding the custody of the child despite there being a finding under issue No.1 by the trial Court and claimed lesser relief of visitation right only, we deem it appropriate to dispose of this appeal by maintaining the right of the appellant-mother and also taking into consideration, waiver of her partial right i.e. by giving up right of custody but claiming the right of visitation only.

At this stage, on asking of the Court regarding the suitable time for meeting the child, counsel for both the parties inform that any time between 1:00 PM to 5:00 PM, can be fixed as per the convenience

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of the parties so that the appellant-mother can travel from Kurukshetra to Karnal to stay with the child for a period of 1 to 3 hours under intimation to the Court by moving a misc. application in case need be.

This petition is disposed of with a direction that the appellant-mother shall be entitled to visitation rights to meet the child Brijesh for at least 2 to 3 hours on 2nd and 4th Sunday of every month either at Mediation and Conciliation Centre, Karnal, or at Atal Park, Karnal or at any other place as mutually agreed between the parties.

The appeal is, accordingly, partly allowed as the appellant-mother has given up the right of custody but insisted for her right of visitation till the child attains majority.

In case the parties are not able to amicably dissolve the marriage under Section 13-B of the Hindu Marriage Act, it will be open to them to approach this Court for variation of the terms of visitation right/custody.

(M.M.S. BEDI)
JUDGE

December 11, 2017.
raj arora

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No